TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1923.

No. 546.

WILLIAM R. RODMAN, UNITED STATES MARSHAL, PETITIONER,

vs.

ROLAND R. POTHIER.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

FILED FEBRUARY 18, 1924.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1923.

No. 546.

WILLIAM R. RODMAN, UNITED STATES MARSHAL, PETITIONER,

vs.

ROLAND R. POTHIER.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

INDEX.

1 United States Circuit Court of Appeals for the First Circuit.

October term, 1922.

ROLAND R. POTHIER, petitioner, appellant,
v.
WILLIAM R. RODMAN, UNITED STATES MARSHAL, respondent, appellee.
No. 1629.
Transcript of record of District Court.

[Transferred from United States Supreme Court and filed in Circuit Court of Appeals April 3, 1923.]

UNITED STATES OF AMERICA,
District of Rhode Island.

At a District Court of the United States, holden at Providence, within and for the District of Rhode Island, on the third Tuesday of November, being the twentieth day of November, in the year of our Lord one thousand nine hundred and twenty-two.

Present: The Honorable Arthur L. Brown, District Judge.

ROLAND R. POTHIER.
v.
WILLIAM R. RODMAN, UNITED STATES MARSHAL, and Henry C. Hart, United States Commissioner.
Law 1532–C.

A petition for writ of habeas corpus and for writ of certiorari was filed in the clerk's office on December 6, 1922, and is in the words and figures following:

2 *Petition for writ of habeas corpus and for writ of certiorari.*

Filed December 6, 1922.

To the honorable the judge of the United States District Court for the District of Rhode Island:

The petition of Roland R. Pothier respectfully shows:

1. Your petitioner is a citizen of the United States and a resident of the County of Providence and State of Rhode Island, in this circuit and district.

2. Your petitioner is now actually imprisoned and restrained of his liberty and detained by color of the authority of the United States in the custody of William R. Rodman, Esquire, United States marshal in and for the District of Rhode Island, of the keeper of Providence County jail at Cranston in the County of Providence, State of Rhode Island, in said district.

3. The sole claim and sole authority by which the said William R. Rodman, marshal as aforesaid, or other person in charge, cus-

tody, or control of the body of Roland R. Pothier as aforesaid, so restrains and detains your prisoner, is a certain paper which purports to be a commitment in writing, a copy of which is hereunto annexed marked "A."

4. Upon information and belief, the said commitment was issued by Henry C. Hart, Esq., United States commissioner, in certain proceedings instituted on behalf of the United States, under color of the authority of the Constitution and laws of the United States relating to the arrest and removal of persons charged with a violation of the laws of the United States under section 1014 of the Revised Statutes of the United States, upon a charge that your petitioner has committed the crime of murder within the Southern Division of the Western District of Washington, within the jurisdiction of the United States District Court for that district as appears by Exhibits B and C hereto annexed.

5. Your petitioner did not commit the crime of murder within the jurisdiction of the District Court aforesaid, and your petitioner has not committed the crime of murder anywhere.

3 6. Upon information and belief, that the evidence before the said commissioner committing the said Roland R. Pothier to the custody of the United States marshal or the keeper of the said Providence County jail was solely Exhibits B, C, and D hereto annexed.

7. Upon information and belief, the prisoner when apprehended under warrant to apprehend, as appears by Exhibit E, was immediately produced before the commissioner during the absence of his attorney of record, and was advised by the United States district attorney to plead "not guilty," and was forthwith committed to the custody of the marshal and keeper of the Providence County jail, as appears by Exhibit A.

Your petitioner is prepared to produce evidence to show as follows:

(1) That your petitioner is not legally charged with any crime against the United States.

(2) That your petitioner did not commit any offense against the United States.

(3) That your petitioner is not a fugitive from justice within the meaning of the Constitution and laws of the United States.

(4) That your petitioner is not legally charged with the crime of murder as defined in the Federal Penal Code.

(5) That the United States District Court for the Western District of the State of Washington did not have jurisdiction of the crime of murder, as charged.

(6) That the land upon which it is alleged that said crime was committed was not reserved or acquired for the exclusive use of the United States and under the exclusive jurisdiction thereof.

(7) That the land upon which it is claimed that said crime of murder was committed was under the exclusive jurisdiction of the State of Washington.

9. Upon information and belief the evidence before the commissioner did not show any facts legally charging your petitioner with any crime against the United States; nor with the com-
4 mission of any offense against the United States; nor that your petitioner is a fugitive from justice within the meaning of the Constitution and laws of the United States; nor that the United States District Court for the Western District of the State of Washington had jurisdiction of the crime charged; nor that the lands upon which it is alleged that said crime was committed was reserved or acquired for the exclusive use of the United States and under the exclusive jurisdiction thereof.

10. That the evidence before the commissioner did not show probable cause for believing your petitioner guilty of the crime charged in the indictment and that the commissioner erred in that there was such probable cause.

11. Upon information and belief, the said proceedings before said commissioner were for these and other reasons absolutely void and the said commitment is absolutely void; and your petitioner is now confined and deprived of his liberty in violation of the Constitution of the United States and in violation of the statutes of the United States.

Wherefore your petitioner prays that a writ of habeas corpus may issue, directed to the said William R. Rodman, marshal of the United States, and to each and all of his deputies, to the keeper of the Providence County jail, or other person in charge, custody, or control of the body of Roland R. Pothier, requiring him and them to bring and have your petitioner before this court at a time to be by this court determined, together with the true cause of the detention of your prisoner, to the end that due inquiry may be had in the premises; and that a writ of certiorari may at the same time issue, directed to the said Henry C. Hart, Esq., United States commissioner for the District of Rhode Island and commissioner under the laws of the United States concerning the removal of persons charged with a violation of the laws of the United States, pursuant to section 1014 of the Revised Statutes, directing him to certify to this court all the proceedings which took place before him and all the evidence that was offered before him in the said proceedings, which resulted in the issue of the said commitment; and that
5 this court may proceed in the summary way to determine the facts in this case in that regard and the legality of your petitioner's imprisonment, restraint, and detention and thereupon to dispose of your petitioner as law and justice may require, and your petitioner will ever pray, etc.

Dated at the city of Providence this sixth day of December, 1922.

ROLAND R. POTHIER,
Petitioner.

[Jurat showing the foregoing was duly sworn to by Roland R. Pothier omitted in printing.]

Let order to show cause why writ should not issue be made returnable December 11, 1922, at ten o'clock a. m.

[SEAL.] ARTHUR L. BROWN, *J.*

Exhibit A to petition.

UNITED STATES OF AMERICA,
District of Rhode Island, ss:

The President of the United States of America, to the marshal of the District of Rhode Island and to the keeper of the jail of Providence County in the State of Rhode Island, greeting:

Whereas Roland R. Pothier, alias John Doe, has been arrested upon oath of John J. Daly, special agent Department of Justice, for having, on or about the 25th day of October, 1918, at, to wit, Camp Lewis Military Reservation, within the Southern Di-
6 vision of the Western District of Washington, in violation of section 275 of the Penal Code of the Revised Statutes of the United States, unlawfully murdered one Alexander P. Cronkhite and that indictment charging him with said crime has been found against him by the grand jury of the United States for the Southern Division of the Western District of Washington; and that a bench warrant on said indictment has been issued from said District Court against him upon which a return has been made by the U. S. marshal of said district, all of which appears from certified copies of said indictment and bench warrant attached to the complaint; and further that said Roland R. Pothier, alias John Doe, has heretofore fled from said Southern Division of the Western District of Washington and entered and is now in the State of Rhode Island, in the District of Rhode Island, and, after an examination being made this day held by me, it appearing to me that said offense had been committed, and probable cause being shown to believe said Roland R. Pothier committed said offence as charged.

Now, these are therefore, in the name and by the authority aforesaid, to command you, the said marshal, to commit the said Roland R. Pothier to the custody of the keeper of said jail of Providence County and to leave with said jailer a certified copy of this writ; and to command you, the keeper of said jail of said county, to receive the said Roland R. Pothier, prisoner of the United States of America, into your custody in said jail, and there safely to keep until he be discharged by due course of law.

In witness whereof I have hereunto set my hand and seal at my office in said district, this 19th day of October, A. D. 1922.

HENRY C. HART.
United States Commissioner for said District of Rhode Island.

7 *Exhibit B to Information.*

United States District Court, Western District of Washington, Southern Division.

UNITED STATES OF AMERICA, PLAINTIFF, vs. ROLAND R. POTHIER AND ROBERT ROSENBLUTH, DEFENDANTS	No. 3862. Indictment.

UNITED STATES OF AMERICA,
Western District of Washington, Southern Division, ss:

The grand jurors of the United States of America, being duly selected, impaneled, sworn, and charged to inquire within and for the Southern Division of the Western District of Washington, upon their oaths present:

Count I. That Roland R. Pothier and Robert Rosenbluth on the twenty-fifth day of October, in the year of our Lord one thousand nine hundred and eighteen, within and on lands theretofore acquired for the exclusive use of the United States, and under the exclusive jurisdiction thereof, and within the Southern Division of the Western District of Washington, to wit, within and on the Camp Lewis Military Reservation, then and there being, did, with force and arms, an assault make upon one Alexander P. Cronkhite, with a certain deadly weapon, to wit, a gun, a more particular description of said deadly weapon being to the grand jurors unknown, the said deadly weapon being then and there had and held in the hands of the said Roland R. Pothier and Robert Rosenbluth, and the said Roland R. Pothier and Robert Rosenbluth did then and there wilfully, knowingly, unlawfully, deliberately, and feloniously, and with malice aforethought shoot with said gun at and into the body of him, the said Alexander P. Cronkhite, with a deliberate and premeditated design and intent in them, and in each of them, to effect the death of the said Alexander P. Cronkhite, and thereby did inflict a mortal wound upon and in the body of the said Alexander P. Cronkhite,

8 from which said mortal wound the said Alexander P. Cronkhite then and there languished and died, within and on said Camp Lewis Military Reservation, in said Southern Division of the Western District of Washington, on said twenty-fifth day of October, in the year of our Lord, one thousand nine hundred and eighteen.

And so the grand jurors aforesaid, upon their oaths aforesaid, do say that the said Roland R. Pothier and Robert Rosenbluth in the manner and at the time and place aforesaid, did wilfully, knowingly, deliberately, unlawfully, and feloniously, and with premeditation and malice aforethought, kill and murder the said Alexander P. Cronkhite, contrary to the form of the statute in such case made

and provided, and against the peace and dignity of the United States of America.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

Count II. That one Roland R. Pothier, on the twenty-fifth day of October, in the year of our Lord one thousand nine hundred and eighteen, within and on lands theretofore acquired for the exclusive use of the United States, and under the exclusive jurisdiction thereof, and within the Southern Division of the Western District of Washington, to wit, within and on Camp Lewis Military Reservation, then and there being, did, with force and arms, an assault make upon one Alexander P. Cronkhite with a certain deadly weapon, to wit, a gun, a more particular description of said deadly weapon being to the grand jurors unknown, which he, the said Roland R. Pothier then and there had and held in his hand, and did then and there wilfully, knowingly, unlawfully, deliberately, and feloniously, and with malice aforethought, shoot with said gun at and into the body of him, the said Alexander P. Cronkhite, with a deliberate and premeditated design and intent to effect the death of the said Alexander P. Cronkhite, from which said mortal wound the said Alexander P. Cronkhite then and there languished and died, within and on said Camp Lewis Military Reservation, in said Southern Division of the Western District of Washington, on said twenty-fifth day of October, in the year of our Lord one thousand nine hundred and eighteen.

9 And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

That one Robert Rosenbluth at the time and place aforesaid, to wit, on the twenty-fifth day of October, in the year of our Lord one thousand nine hundred and eighteen, within and on said Camp Lewis Military Reservation, in the Southern Division of the Western District of Washington, a place under the exclusive jurisdiction of the United States, as aforesaid, then and there being, did then and there wilfully, knowingly, deliberately, unlawfully, and feloniously, and with malice aforethought, and with a deliberate and premeditated design and intent then and there in him, the said Robert Rosenbluth, to effect the death of the said Alexander P. Cronkhite, aid, abet, counsel, command, induce, and procure the commission by the said Roland R. Pothier of said offense, to wit, the murder of the said Alexander P. Cronkhite, at the time and place aforesaid, and in the manner aforesaid.

And so the grand jurors aforesaid, upon their oaths aforesaid, do say that the said Roland R. Pothier and the said Robert Rosenbluth in the manner and at the time and place aforesaid, did wilfully, knowingly, deliberately, unlawfully, and feloniously, and with premeditation and malice aforethought, kill and murder the said Alex-

ander P. Cronkhite, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

THOS. P. REVELLE.
United States Attorney.
JUDSON F. FALKNOR.
Assistant United States Attorney.

A true bill.

JNO. B. CROMWELL.
Foreman Grand Jury.

Presented to the court by the foreman of the grand jury in open court in the presence of the grand jury and filed in the U. S. District Court Oct. 13, 1922.

F. M. HARSHBERGER, *Clerk.*
By ED M. LAKIN, *Deputy.*

10 *Exhibit C to petition.*

Without bail. Secret.

No. 3862. Bench warrant. Indictment.

UNITED STATES OF AMERICA,
Western District of Washington, Southern Division, ss:

The President of the United States to the marshal of the United States of America, for the Western District of Washington, his deputies, or any or either of them, greeting:

Whereas at a District Court of the United States of America for the Western District of Washington, begun and held at the city of Tacoma, Washington, within and for the district aforesaid, on the 13th day of October, in the year of our Lord one thousand nine hundred and twenty-two, the grand jurors in and for said district returned into the said District Court a true bill of indictment against Roland R. Pothier and Robert Rosenbluth for violation of section 275 P. C., as by the said bill of indictment, now remaining on file and of record in said court, will more fully appear, to which bill of indictment the said Roland R. Pothier has not yet appeared or pleaded.

Now, therefore, you are hereby commanded, in the name of the President of the United States of America, to apprehend the said Roland R. Pothier and his body bring before the said court, at the United States District Court room, in the city of Tacoma, Washington, to answer the bill of indictment aforesaid.

Witness the Honorable Edward E. Cushman, judge of the said District Court, and the seal thereof, at the city of Tacoma, Washington, this 13th day of October, A. D. 1922.

[Seal of U. S. Court.]

F. M. HARSHBERGER, *Clerk*.
By ALICE HUGGINS, *Deputy Clerk*.
THOS. P. REVELLE,
United States District Attorney.
JUDSON F. FALKNOR,
Asst. U. S. Attorney.
W. W. MOUNT,
Asst. U. S. Attorney.

11 *Exhibit D to petition.*

UNITED STATES OF AMERICA,
District of Rhode Island, ss:

Division.

Before me, Henry C. Hart, a United States commissioner for the District of Rhode Island Division, personally appeared this day John J. Daly, special agent, who being first duly sworn, deposes and says as he is informed and believes that on or about the 25th day of October, A. D. 1918, at to wit, Camp Lewis Military Reservation, within the Southern Division of the Western District of Washington, Roland R. Pothier, alias John Doe, in violation of section 275 of the Penal Code of the Revised Statutes of the United States, did unlawfully murder one Alexander P. Cronkhite, and that indictment charging him with said crime has been found against him by the grand jury of the United States for the Southern Division of the Western District of Washington; and that a bench warrant on said indictment has been issued from said District Court against him upon which a return has been made by the U. S. marshal of the said district that he is unable to find the said defendant, Roland R. Pothier, all of which appears from certified copies of said indictment and bench warrant attached hereto; and, further, that said Roland R. Pothier, alias John Doe, has heretofore fled from said Southern Division of the Western District of Washington and entered and is now in the State of Rhode Island, in the District of Rhode Island, contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the United States of America.

(Deponent's signature) JOHN J. DALY.

Sworn to before me, and subscribed in my presence this 19th day of October, A. D. 1922.

HENRY C. HART,
United States Commissioner as Aforesaid.

12 *Exhibit E to petition.*

The President of the United States of America to the marshal of the United States for the District of Rhode Island and to his deputies, or any or either of them:

Whereas John J. Daly, special agent, Department of Justice, has made complaint in writing under oath before me, the undersigned, a United States commissioner for the District of Rhode Island Division, charging that Roland R. Pothier, alias John Doe, late of Providence County, in the State of Rhode Island, did, on or about the 25th day of October, A. D. 1918, at Camp Lewis Military Reservation, within the Southern Division of the Western District of Washington, in violation of section 275 of the Penal Code, Revised Statutes of the United States, unlawfully murder one Alexander P. Cronkhite, and that indictment charging him with said crime has been found against him by the grand jury of the United States for the Southern Division of the Western District of Washington; and that a bench warrant on said indictment has been issued from said District Court against him upon which a return has been made by the U. S. marshal of said district that he is unable to find the said defendant, Roland R. Pothier, all of which appears from certified copies of said indictment and bench warrant attached to said complaint; and further that said Roland R. Pothier, alias John Doe, has heretofore fled from said Southern Division of the Western District of Washington and entered and is now in the State of Rhode Island, in the District of Rhode Island, contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the United States of America.

Now, therefore, you are hereby commanded, in the name of the President of the United States of America, to apprehend the said Roland R. Pothier, alias John Doe, wherever found in your district, and bring his body forthwith before me or any other commissioner having jurisdiction of said matter, to answer the said complaint, that he may then and there be dealt with according to law for the said offense.

13 Given under my hand and seal this 19th day of October, A. D. 1922.

HENRY C. HART.
United States Commissioner as Aforesaid.

In United States District Court.

Citation to show cause.

The President of the United States of America to William R. Rodman, United States marshal for the District of Rhode Island, and to each and all of his deputies, and to the keeper of the Providence County jail, or any other person in charge, custody, or control of the body of Roland R. Pothier, and to Henry C. Hart, esq., United States commissioner for said district, greeting:

You are to take notice that a petition for a writ of habeas corpus has been filed in our District Court for the District of Rhode Island by Roland R. Pothier, for an order commanding the United States marshal, or the keeper of the Providence County jail, or other person in charge, custody, or control of the body of said Roland R. Pothier, to have before this honorable court the body of said Roland R. Pothier, together with the true cause of the detention of said petitioner, to the end that due inquiry may be had in the premises;

And for a writ of certiorari to Henry C. Hart, esq., United States Commissioner for said district, and commissioner under the laws of the United States, acting pursuant to section 1014 of the Revised Statutes of the United States, directing him to certify to this court all the proceedings had before him and all evidence offered before him in the said proceedings, which resulted in the commitment of the petitioner;

And that a hearing will be had upon said petition at the District Court to be holden at Providence within and for said district, on the eleventh day of December, 1922, at 10 o'clock a. m., at which time and place you shall attend and show cause why said petitions should not be granted.

14 Witness the Honorable Arthur L. Brown, judge of the United States District Court for the District of Rhode Island, at Providence, this seventh day of December, A. D. 1922.

L. B. LAWTON,
Chief Deputy Clerk.

UNITED STATES OF AMERICA,
District of Rhode Island.

A copy of this process received by the United States marshal.

At Providence, in said district, this seventh day of December, A. D. 1922, I made service of this citation on the within-named Henry C. Hart, United States commissioner, by leaving in his hands and possession a true and attested copy of the same. And, further, at Howard, in said district, this seventh day of December, A. D. 1922, I made service of this citation on the within-named Charles

E. Linscott, keeper of the Providence County jail, by leaving in his hands and possession a true and attested copy of the same.

WILLIAM R. RODMAN, *U. S. Marshal.*
By HENRY B. CONGDON, *Deputy.*

Fees, service, $4.00
mileage, .48
$4.48

In United States District Court.

Petition for warrant of removal.

Filed December 6, 1922.

To the Honorable Arthur L. Brown, United States District judge for the District of Rhode Island:

Respectfully represents Norman S. Case, United States attorney for the district of Rhode Island, that upon complaint of John J. Daly, special agent of the Department of Justice, sworn out before Henry C. Hart, a United States commissioner for said district, charging that Roland R. Pothier, did, on or about the twenty-fifth day of October, A. D. 1918, at, to wit, Camp Lewis, a military reservation in the Southern Division of the Western District of Washington, in violation of section 275 of the Penal Code of the Revised Statutes of the United States, unlawfully murder one Alexander P. Cronkhite, the details of said crime being more fully set forth in indictment No. 3862, entitled United States v. Roland R. Pothier and Robert Rosenbluth, returned in the District Court of the United States for the Southern Division of the Western District of Washington, a certified copy of which said indictment is now on file in the clerk's office of the District Court of the United States for the District of Rhode Island, and that upon warrant issued on said complaint by the said Henry C. Hart, a United States commissioner as aforesaid, the said Roland R. Pothier has been apprehended and, upon being brought before said commissioner, and after an examination made by said commissioner, the said commissioner found that said offense had been committed and that there was probable cause shown to believe that said Roland R. Pothier had committed said offense, as charged, and thereupon the said commissioner committed said Roland R. Pothier to the custody of the keeper of the Providence County jail, to be kept until he, the said Roland R. Pothier, should be discharged by due course of law.

Wherefore, your petitioner prayes that an order of removal of the said Roland R. Pothier to the said Southern Division of the Western District of Washington may issue agreeably to the provisions of section 1014 of the Revised Statutes of the United States.

NORMAN STANLEY CASE,
United States Attorney.

Let citation issue to said Roland R. Pothier returnable December 11, 1922, at 10 o'clock a. m.

ARTHUR L. BROWN, *J.*

DECEMBER 7, 1922.

In United States District Court.

Citation to show cause.

The President of the United States of America, to Roland R. Pothier, greeting:

You are to take notice that a petition for an order directing
16 your removal to the Southern Division of the Western District of Washington, agreeably to the provisions of section 1014 of the Revised Statutes of the United States, has been filed in the District Court of the United States for the District of Rhode Island by Norman S. Case, United States attorney for the District of Rhode Island, upon complaint of John J. Daly, special agent of the Department of Justice, sworn out before Henry C. Hart, a United States commissioner, charging violation by you of section 275 of the Penal Code, R. S. U. S.

And that a hearing will be had upon said petition at the District Court to be holden at Providence within and for said district on the eleventh day of December, 1922, at 10 o'clock a. m., at which time and place you shall attend and show cause why said petition should not be granted.

Witness the Honorable Arthur L. Brown, judge of the District Court of the United States for the District of Rhode Island, at Providence, this seventh day of December, A. D. 1922.

L. B. LAWTON,
Chief Deputy Clerk.

UNITED STATES OF AMERICA,
District of Rhode Island.

At Howard, in said district, this seventh day of December, A. D. 1922, I made service of this citation on the within-named Roland R. Pothier by reading the same in his presence and hearing and leaving in his hands and possession a true and attested copy of the same.

WILLIAM R. RODMAN, *U. S. Marshal,*
By HENRY B. CONGDON, *Deputy.*

Fees, Service,	$2.00
Mileage,	.42
	$2.42

The petition for writ of habeas corpus and for writ of certiorari came on to be heard on December 11, 1922, and was heard together with the petition of the United States attorney for a warrant of removal before the Honorable Arthur L. Brown, district judge, and having been duly argued by counsel for the respective parties, said petitions were held for advisement.

17 United States District Court for the District of Rhode Island.

Transcript of proceedings taken December 11, 1922.

[Title omitted.]

Hearing on Petition for Writ of Habeas Corpus and Writ of Certiorari: Decision Held Temporarily.

Hearing on petition for warrant of removal.

United States Exhibit 1:—Certified copy of indictment 3862, Western District of Washington.

Defendant's Exhibit A:—Copy of act of legislature of Pierce County, Washington.

18 Defendant's Exhibit B: Photographic copy of the deed from Pierce County to the United States.

Mr. ARNOLD. If your Honor please, we have gone over some of these letters and the defendant is prepared to offer the letter of the Secretary of War to Mr. Stephen C. M. Appleby, chairman of the Pierce County committee, dated December 2, 1916.

Mr. ANDREWS. Just here I would like to say that Major Smith has brought these from the War Department. Some are the only copies they have and some are copies. Now, he has got to take back with him some records for the department. He can't leave them here. I think if those he has copies of are presented to him, then you could read into the record the documents of which he has no copy, and leave the copies here when he has them. Otherwise than that we would be tied up.

Mr. ARNOLD. There is only one of that kind I think.

Mr. ANDREWS. Oh, there are several.

Mr. ARNOLD. Very well. Also a letter of December——

The COURT. What exhibit will that be?

Mr. ARNOLD. Defendant's Exhibit C, December 2, 1916, from the Secretary of War to Mr. Stephen C. M. Appleby.

(Letter of December 2, 1916, from Secretary of War to Mr. Stephen C. M. Appleby, marked "Defendant's Exhibit C.")

Mr. ARNOLD. Another letter of December 6 from the Secretary of War to Mr. Appleby, "Defendant's Exhibit D."

(Letter of December 6, 1916, from Secretary of War to Mr. Stephen C. M. Appleby marked "Defendant's Exhibit D.")

Mr. ANDREWS. I don't want these finally introduced unless Major Smith can let them stay here. I think if we put Major Smith on and hand him those things and either read them into the record or introduce the copies, that will be satisfactory.

The COURT. Copies can be made.

Mr. ARNOLD. Yes, your Honor. Letter of July 8 from the Secretary of War—1919—from the Secretary of War to Mr. J. T. S. Lyle. That is "Defendant's Exhibit E."

19 The COURT. Well, what is the purpose of these? These are after the event?

Mr. ARNOLD. Yes, and before the deed was given.

The COURT. Secretary of War to whom?

Mr. ARNOLD. To the Secretary of War, if your Honor please, from Mr. Lyle.

Mr. ANDREWS. I don't want to seem to urge this again, but Major Smith expects to take these back and if they are introduced and stamped, it will be difficult.

The COURT. These have got to be put in and the other copy, the substituted copies, have got to be attended to. If he is called to produce them, he must be here for such time as is necessary to have them produced. After they are produced the question of substituting copies can be taken care of. There is no use of bringing documents here and saying he hasn't got time to have them introduced.

Mr. ANDREWS. I suggested that if they were read into the record it would not be necessary to have them go in.

The COURT. Well, we will put them in now.

(Letter of July 8, 1919, from Mr. J. T. S. Lyle to the Secretary of War, marked "Defendant's Exhibit E.")

Mr. ARNOLD. Letter of July 10 with maps attached. That is Exhibit F.

(Letter of July 10, 1919, with maps attached, marked "Defendant's Exhibit F.")

Mr. ARNOLD. The last one is from the Secretary of War to Mr. J. T. S. Lyle, dated July 1, 1918.

The COURT. July 1, 1918?

Mr. ARNOLD. Yes, your Honor. That is all. Exhibit G.

(Letter of July 1, 1918, marked "Defendant's Exhibit G.")

The COURT. Very well. That is all your exhibits?

Mr. ARNOLD. All, if your Honor please, that I have had an opportunity to check up at the present time. I understand the United States is to introduce all the other communications, and if they are all in, why, that is satisfactory to the defendant.

The COURT. They haven't yet.

20 Mr. ARNOLD. He has them here and is going to introduce them.

The COURT. Well, the introduction of these exhibits is part of the petitioner's case?

Mr. ARNOLD. Yes, your Honor.

The COURT. You may now proceed. Now, if these things have to be copied so he can take them back, you would better set somebody to work copying them. Proceed, gentlemen. I don't know how far you are entitled to extend this examination. I notice that in the case in 218 United States Reports there is a query—that is, Holt against the United States.

Mr. ANDREWS. I don't recall it by that name.

The COURT. It refers to certain maps, etc., documents, and suggests they were properly introduced "and so far as we can see justi-

fied the finding of the jury even if the evidence of the de facto exercise of exclusive jurisdiction was not enough, or if the United States was called on to try title in a murder case." There is an expression of a doubt as to whether the United States was called upon to prove more than the de facto relations. That is a mere query in the course of that case.

Mr. ANDREWS. It is the Government's position that we don't have to prove any more than probable cause—and that is as to all the facts—and that is that the Government probably has title, that is sufficient. We haven't got to pass finally upon this title at best.

The COURT. Well, proceed with whatever you have to put in.

Mr. CHASTIAN. May it please the court, the Government desires to introduce further letters that passed between these same parties, the Secretary of War and the representative of Pierce County, the representative of the committee.

The COURT. Then the first one will be your Exhibit 2?

Mr. CHASTIAN. Yes, subject to the same condition as the others, of copies being made of those that have to be returned as part of the original record to Major Smith.

The COURT. Yes.

Mr. CHASTIAN. And subject further to the consideration of
21 the fact as to whether the Government should be required to make further proof or not. We are willing to have it done fully now and get them off our mind subject to that condition.

The COURT. Very well. It is for you to say what you are to put in.

Mr. CHASTIAN. Letter from J. T. S. Lyle, special attorney and official representative of Pierce County, to the Secretary of War, dated June 27, 1918.

The COURT. Exhibit 2.

(Letter of June 27, 1918, from Mr. J. T. S. Lyle to the Secretary of War, marked "United States Exhibit 2.")

Mr. CHASTIAN. Memorandum for the Secretary of War, dated December 26, 1916, from the Judge Advocate General of the Army.

(Memorandum dated December 20, 1916, for the Secretary of War from the Judge Advocate General of the Army, marked "United States Exhibit 2.")

Mr CHASTIAN. Copy of memorandum for the Chief in Staff.

The COURT. Please state the number.

Mr. CHASTIAN. I offer as Exhibit No. 3 memorandum for the Secretary of War dated June 20, 1916, from the Judge Advocate General—I beg your pardon, I mean December 20.

The COURT. Let's get these things straight.

Mr. CHASTIAN. December 20, 1916, from the Judge Advocate General.

(Memorandum dated December 20, 1916, for the Secretary of War from the Judge Advocate General marked "United States Exhibit 3.")

Mr. CHASTIAN. As Exhibit No. 4 memorandum for the Chief of Staff dated June 29, 1918, signed "James J. Mayes, Acting Judge Advocate General."

(Memorandum dated June 29, 1918, for the Chief of Staff from James J. Mayes, Acting Judge Advocate General, marked "United States Exhibit 4.")

Mr. CHASTIAN. It is a memorandum for the Chief of Staff. Perhaps I better go further with that title. "Subject: Modification of agreement entered into by the Secretary of War and Pierce
22 County, Washington, December 2, 1916, including the question of Nisqually Indian Reservation land." There was a tract south of this original land that was being acquired.

The COURT. Is this Indian territory?

Mr. CHASTIAN. It was an Indian reservation which was condemned by Pierce County in these proceedings and finally included in the area. The letter refers there to two subjects. The Government offers as Exhibit No. 5 a copy of a letter from the Secretary of War to Mr. J. T. S. Lyle, special attorney, Tacoma, Washington, dated July 1, 1918.

(Letter dated July 1, 1918, from the Secretary of War to Mr. J. T. S. Lyle, marked "United States Exhibit 5.")

Mr. CHASTIAN. The Government offers as Exhibit No. 6 a document in the form of a second endorsement memorandum to the War Department from the Judge Advocate General's office and the Adjutant General of the Army dated July 1, 1918.

(Second endorsement memorandum from the Judge Advocate General's office and the Adjutant General of the Army to the War Department, marked "United States Exhibit 6.")

Mr. CHASTIAN. The Government offers as Exhibit No. 7 memorandum for the Acting Judge Advocate General signed John A. Smith, Major, Judge Advocate, dated December 6, 1919. "Subject: Propriety of accepting only a portion of the lands acquired by Pierce County, Washington, for donation to the United States for permanent military training camp at Camp Lewis, American Lake, Washington."

(Memorandum dated December 6, 1919, from John A. Smith, Major, Judge Advocate, to the Acting Judge Advocate General marked "United States Exhibit 7.")

Mr. CHASTIAN. The Government offers as Exhibit No. 8—may it please the court, there are several documents here under one seal. I suppose it should go in as one exhibit.

The COURT. Well, what is it?

Mr. CHASTIAN. A certified copy of a letter from J. T. S. Lyle, dated June 21, 1918, with copies of maps marked "A" and "B" referred to therein, also attached copies of letters from J. T. S.
23 Lyle, dated March 11 and March 17, 1919, respectively, and attached copy of memorandum signed by E. A. Hickman showing the delivery of letters dated March 11 and 17 to Mr. J. T. S. Lyle.

The COURT. They may be put in as one exhibit, Mr. Arnold?

Mr. ARNOLD. Yes; you Honor.

(Certified copy of a letter from J. T. S. Lyle, dated June 21, 1918, with papers attached thereto, marked "United States Exhibit 8.")

Mr. CHASTIAN. The Government offers as Exhibit No. 9 judgment and decrees in the Superior Court of the State of Washington for Pierce County, No. 41,285, entitled "Pierce County, Washington, ex rel. Thomas H. Bellingham, James R. O'Farrell, and James W. Slayden, county commissioners of said county, v. John August Abrahamson et al., findings of fact and judgment and judgment of appropriation referring to——

The COURT. What was the date of that?

Mr. CHASTIAN. Dated January 26, 1918, and having particular reference to and including lots located in the southwest quarter of section 12, township 18 north, range 1 east, Willamette Meridian, and lands located in the northwest quarter of section 13, township 18 north, range 1 east, Willamette meridian, and being included in the first original suit above entitled.

(Judgment and decrees in the Superior Court of the State of Washington for Pierce County, No. 41,285, dated January 26, 1918, marked "United States Exhibit 9.")

Mr. CHASTIAN. The Government offers as Exhibit No. 10—if your Honor please, this is another instance of several documents under one seal. Will they go in as one exhibit, Mr. Arnold?

Mr. ARNOLD. Yes.

Mr. CHASTIAN. The following documents under one seal of authentification—attached copies of General Orders Nos. 95, 101, and 109, War Department, 1917; attached copy of Special Orders No. 60, Headquarters Western Department, 1917, and attached copy of annual report of Adjutant General of the Army to Secretary of War for the fiscal year ending December 30, 1920; and attached copies of telegrams referring to the organization and
24 movement of troops composing the 91st Division at Camp Lewis, Washington; and attached copy of letter dated January 18, 1918, from the Commanding General, 91st Division, Camp Lewis, Washington; Subject: The roster of officers and reports showing organization of 91st Division; and an attached copy of a report showing the organization of the division referred to in paragraph 2 of the letter in question. That is all of the exhibits at present.

The COURT. 10 is the last exhibit?

Mr. CHASTIAN. No. 10; yes.

(Copies of General Orders Nos. 95, 101, and 109, War Department, 1917, with papers attached thereto under one seal of authentification, marked "United States Exhibit 10.")

JOHN T. S. LYLE (United States witness, resumed):

Q. 1. (By Mr. CHASTIAN.) Please state your name and address to the stenographer.

A. John T. S. Lyle.

Q. 2. Where is your residence, Mr. Lyle?

A. Tacoma, Washington.

Q. 3. Please state briefly the incidents connected with the donation referred to in the letters which have been introduced there dated December 2, 1916, and December 6, 1916.

A. In the Army appropriation bill of August 30, 1917, the provision was inserted authorizing the Secretary of War to accept donations of such site or sites as he deemed suitable and desirable for permanent mobilization, training, and supply stations for the United States Army. Early in September, John Bell, who was commanding the Western Department, came to Tacoma and interested citizens of Pierce County in the project of donating a tract of land adjacent to Tacoma situated near—at American Lake in the county, and, following that conference, a committee of citizens went to Washington in the latter part of October of 1916 and, after discussing the matter with the Secretary of War, a letter, which is dated December 2, 1916, was drafted and finally signed on December 2, 1916.

Q. 4. Were you a member of that committee?

25 A. I was not a member of the committee that went East. I was a member of the citizens committee as a whole.

Q. 5. Please state the next step?

A. Following that letter, the people of Pierce County—the citizens of Pierce County—held a special election and voted the sum authorizing the issuance of the sum of two million dollars in bonds for the purpose of acquiring this tract of land of approximately seventy thousand acres.

Q. 6. For donation?

A. For donation to the United States Government for military purposes. The next step was the passage of the act by the legislature.

Q. 7. That is the act referred to here this morning?

A. Known as chapter 3 of the Laws of 1917, approved on January 29, 1917. That act following the mandate of the State constitution provided for the repelling of invasion and suppression of insurrection and the training of the militia called upon Pierce County as an agency of the State to bond itself for two million dollars and acquire such tracts of land as might be selected by the Secretary of War and donating the same free of cost to the United States Government for military purposes referred to in the act.

Q. 8. What step, if any, was taken by the Secretary of War toward selecting that tract of land?

A. In the letter of December 2, 1916, a map was attached and marked out in a tentative way the land that was desired. That remained the program until in May, when the——

Q. 9. May of what year?

A. May of 1917, and we were proceeding to acquire the land in accordance with the original program as outlined in the letter of December 2, 1916. The war then came on and the Secretary of War desired to designate those lands as lands for maneuvering

purposes and a training ground for troops of the National Army which was about to be formed and asked us if he could get possession of that land for that purpose. That necessitated a change in the program and I worked out a form of deed whereby the owners of the land which was wanted for buildings quitclaimed title of the property to the Pierce County, deeding it for military purposes, leaving the compensation to be fixed in the condem-
26 nation proceedings which were to follow, and I then wired the Secretary of War that we could get possession of the lands for building in ten days and would have the balance of the land needed for maneuvering purposes before it was acquired. The date of that telegram was May 21, 1917. I then asked the Secretary of War to appoint an official representative to select the lands required for the new purpose, as he required different lands than what had been outlined in the previous map. The lands were selected by the representative of the Secretary of War and on July 1, 1917, the county commissioners passed the resolution required by chapter 3, Laws of 1917, reciting that the Secretary of War had selected the particular lands designated, and on the same day a petition in condemnation was filed covering those lands. This petition covered some 706 tracts, aggregating 32,600 acres of land.

Q. 10. That is designated on the map there in any particular way as first or second suit—I beg your pardon. That map hasn't been introduced yet.

Mr. CHASTIAN. If the court please, I believe it doesn't appear clearly on this map that is already in evidence. The Government—interrupting his testimony—offers as Exhibit No. 11 a map bearing the legend "Camp Lewis, Army post and vicinity, Pierce County, Washington, Edition 1917, prepared by Nicholson Engineering Company, Fidelity Building, Tacoma, Washington, including the area of Camp Lewis."

(Map marked "United States Exhibit 11.")

Q. 11. Now, Mr. Lyle, were those suits that you just spoke of included in the area designated on this map? If so, what area; which one of the areas?

A. The Abrahamson suits, so-called, covered that area bound in yellow on this map.

Q. 12. And designated as the first suit?

A. Designated by the legend "First suit."

Q. 13. Was there included in that first suit sections 12 and 13 of township 18 north, range 1 east, Willamette meridian?

A. Yes, sir.

Q. 14. What was the date of the judgment on that suit, if you recall?

A. Well, for convenience of trial we selected small tracts
27 as enough for the jury to handle at one time and would get a verdict on that and have the judgment entered, pay the

money into court and get the judgment of possession and file that judgment in the office of the county auditor of Pierce County.

Q. 15. Now, just there, in connection——

A. This was done successively until all the land covered in the Abrahamson suits had been acquired. Where settlement was made judgment was entered by the court without the jury on the testimony of the petitioner's witnesses, so that in the Abrahamson case there were probably fifteen or twenty separate judgments entered, but all part of the same case.

Q. 16. The last of these judgments was entered prior to what time?

A. The last judgment was entered in March, 1918, in the Abrahamson case.

Q. 17. What action, if any, was taken by the representative designated by the Secretary of War and yourself with reference to each separate tract when a judgment would be signed for it as to being turned over to the Government for use?

Mr. ARNOLD. Just a moment, please; I didn't get that.

[Question 17 read by the stenographer.]

A. Following out the plan of getting the land for maneuvering purposes as it was needed, it was my custom to notify the representative of the Secretary of War immediately after we had secured judgment and possession of any tract of land, and I furnished him a map on which I traced with colors from time to time the land to which we had acquired title and turned them over to the military authorities for use.

The COURT. What interests were you representing, Mr. Lyle?

WITNESS. I was special attorney for Pierce County.

The COURT. You were doing this for the county?

WITNESS. Yes.

Q. 18. Referring to Exhibit 9, please identify, if you can, as to whether that applies to the southwest quarter of section 12 and the northwest quarter of section 13, township 13 north, range 1 east, Willamette meridian, State of Washington, County of Pierce?

28

A. This is one of the judgments referred to, Government's Exhibit 9, dated January 6, 1918.

Q. 19. January 6 or 26?

A. 26, 1918.

The COURT. Well, does that cover the present locus?

WITNESS. Yes. And among other things it covers the southwest quarter of section 12, township 18 north, range 1 east of the Willamette meridian, and the northwest quarter of section 13, township 18 north, range 1 east, Willamette meridian.

The COURT. That was acquired in 1918.

WITNESS. Yes, 1918.

The COURT. I understand the notification to the Federal authority was practically at the same time you entered your judgments?

WITNESS. Substantially so; yes; within a day or so, as we were in constant communication.

The COURT. We are trying just the general lines.

Q. 20. Mr. Lyle, will you state whether or not this map in the part designated as suit 1, this map, Government's Exhibit No. 11, in the part designated as suit 1, covers those two areas about which you have just testified?

A. It does.

Q. 21. Will you please mark with a pencil sections 12 and 13, as referred to, with your initial?

[Witness complies with request.]

Q. 22. Please state, Mr. Lyle, what took place with reference to them after the procuring of those judgments and decrees during 1918, prior to July last?

A. In June, 1918, I went to Washington and took with me all the documents relating to the acquiring of all the land set forth in the Abrahamson case and also the 4,700 acres in which was part of the Nisqually Indian Reservation immediately southwest of the land covered by the Nisqually Indian Reservation. I submitted these titles to the Secretary of War for his approval and secured his approval and the titles. At that time I offered to have the deed executed.

Mr. ARNOLD. What was that date, Mr. Lyle? I missed that.

A. June 17. The submission is covered by the letter of June 21, 1918. June 21, 1918. The date of the Secretary's approval is July 1, 1918.

29 The COURT. Approved July 1, 1918?

WITNESS. Yes; letter of July 1, 1918.

Mr. CHASTIAN. Mr. Lyle's letter was dated July 21.

The COURT. That is Exhibit 8.

Mr. ANDREWS. That is what I was trying to find.

(Exhibit handed to the court.)

The COURT. Now, where is the approval of this document, which is several pages long?

Mr. CHASTIAN. That is the only one that is among the Government's exhibits——

The COURT. What I want is the Secretary's approval of something.

Mr. CHASTIAN. His letter is dated July 1, your Honor, please.

Mr. ANDREWS. No. 5, isn't it?

Q. 23. With reference to Government's Exhibit No. 2, letter dated June 27, 1918, state what that says in reference to—does that letter dated June 27 have any relation to this first suit?

A. To this extent, it simply outlines the plan upon which we had proceeded in acquiring title of the land and asks approval of that plan so that it may be followed in the subsequent suits.

The COURT. It seems to me that much of this correspondence is of no consequence.

Mr. ANDREWS. Much of it must speak for itself; it is its own best evidence of what it contains.

Q. 24. Referring to Defendant's Exhibit G, copy of a letter dated July 15, 1918 (please state what reference that has to the lands included on the map of Suit 1 of the Abrahamson suit.

A. That is in answer to my letter of June 21, 1918, to the Secretary of War.

The COURT. Let's not get mixed on our land. Are there letters relating to other tracts of land than the locus of this crime?

WITNESS. This all relates to the same subject.

Mr. CHASTIAN. Some of it was acquired at a later date.

The COURT. Very well.

WITNESS. In the letter of June 21, I had asked formal approval of the section and acquisition of the lands already obtained as set forth in the Abrahamson case which I have referred to in the map marked "Exhibit A" and a modification of the original agreement that, instead of limiting the fixing the land at 70,000 acres it would be as much land as our two million dollars would buy, and in his reply of July 15th, 1918, the Secretary of War formally approved of the selection of the land covered by the Abrahamson case and the Nisqually Indian case. It is the last paragraph of the letter, and the last paragraph of the letter refers to the preceding paragraph.

Q. 25. Had these tracts of land included in sections 12 and 13 of township 18 north, range 1 east, Willamette meridian, been formally turned over to the representative of the War Department prior to July 1, 1918?

A. They had.

Q. 26. And the approval of the Secretary of War, as set out in those letters there, followed that action when you came on to Washington?

A. Yes.

The COURT. Prior to July 1?

Mr. CHASTIAN. July 1, 1918.

Q. 27. Was this area—do you know of your own personal knowledge whether this area was in use by the Army for military purposes?

A. It was.

Q. 28. For what period of time?

A. Just what area do you wish to limit it to?

Q. 29. Included in the first suit, approximately 36,000 acres of which we have been speaking?

A. Part of it was taken possession of in May, 1917.

The COURT. Let's not get mixed. We are trying this particular place, a very small place, where this killing took place. Now confine yourself to that.

A. Sections 12 and 13 referred to were taken possession of within a week after——

Q. 30. After judgment was signed?

A. After the judgment was signed.

The COURT. Within a week after what date?

WITNESS. After June 26, 1918—January 26, 1918.

The COURT. Well, then, this particular locus had been surrendered and possession taken as early as one week after January 26?

31 WITNESS. 1918; yes, sir.

The COURT. 1918?

WITNESS. Yes, sir.

Q. 31. (By Mr. ANDREWS.) Do I understand, then, in the latter part of June, 1918, you offered the Government a deed of this land?

A. Yes, sir.

Q. 32. And then your side of the contract was—as far as Pierce County was concerned the Government had done everything, and you were ready to deliver them a deed?

A. Yes.

Q. 33. And they simply put off the taking of that deed until there was more to be covered—is that it?

Mr. ARNOLD. He is testifying.

Mr. ANDREWS. I am asking him.

The COURT. It is somewhat leading.

Q. 34. Will you state how that was?

A. I made the offer at the time when I was there in June, 1918, and after discussing the matter it was decided it would be more convenient to wait until all the land had been acquired and cover all by one deed.

Q. 35. But you were ready to pass title of this?

A. We were ready; yes.

Q. 36. And the Government raised no objection to taking it as it was offered, except that they wanted it all—is that it?

A. Well, they approved of it.

Q. 37. Yes, approved of it at that time. And now you say that you personally know from your own knowledge and observation that prior to that time the Army of the United States had actually occupied this area?

A. Yes, sir.

Q. 38. And used it for drill and camp purposes?

A. Yes.

Q. 39. For some considerable period. Are you familiar with the place where the alleged killing occurred? Do you know where it is located?

A. I am familiar with the southwest quarter of section 12 and the northwest quarter of section 13, township 18 north, range 1 east.

Q. 40. And it is covered by these deeds?

A. Yes.

The COURT. Anything further?

Mr. CHASTAIN. I believe that is all.

32 Q. 41. The United States did in fact exercise absolute control over that from your observation?

Mr. ARNOLD. I object to the question as leading.

Q. 42. I will ask if from your observation——

Mr. Arnold. I think that is a question for your honor to decide.

The Court. Well, perhaps that is a little leading. What did you see that they did?

Mr. Andrews. I will frame it this way:

Q. 43. You were the representative of Pierce County, were you not? Did Pierce County through you exercise any judicial authority in that district after that time?

A. We did not.

Q. 44. Did you see the Government exercise authority over that area and over the people and things in it?

Mr. Arnold. I object.

The Court. Well, I should think the question would be, what did you see them do?

Mr. Andrews. I thought that would be a long story.

Q. 45. What did you see the Government do? What did you see the United States do?

A. The military authorities took possession of all the land as we turned it over to them, and used it for training purposes, constructed buildings, constructed trenches and trench areas, and used it for artillery purposes and everything that concerned or was connected with artillery training, and this particular section not far from camp, sections 12 and 13, were used almost daily for military and maneuvering purposes.

Q. 46. You saw no one else exercise any authority over it?

A. No, no.

Cross-examination:

X Q. 47. (By Mr. Arnold.) Mr. Lyle, you were the attorney for Pierce County, State of Washington, were you not?

A. Yes, sir.

X Q. 48. And in all these proceedings that you testified about, you were representing the State of Washington?

A. Possibly, in the last analysis. I was representing Pierce County, which was the agent for Washington.

X Q. 49. And as the representative of Pierce County under authority given to Pierce County by an act of the legislature you
33 proceeded to obtain the judgment which is known in this case as "Government's Exhibit No. 9"?

A. Yes, sir.

X Q. 50. And that judgment gave to Pierce County the title to the land specified therein?

A. Yes, sir.

X Q. 51. When did Pierce County part with the title of the land as set forth in Defendant's Exhibit No. 9?

Mr. Andrews. That is a conclusion. That is what we are here to decide. It is the court's function to decide that question, not the witness.

Mr. Arnold. If your Honor please, this is the attorney who has handled this matter and he has testified——

The COURT. Well, I think he may answer.

Mr. ANDREWS. He is still a witness.

A. The formal instrument was dated—executed by officers of Pierce County on October 1, 1919.

X Q. 52. That was when Pierce County parted with the title to the premises as set forth in Government's Exhibit No. 9?

A. That was when they executed the deed; yes, sir.

X Q. 53. Yes. There had been no other conveyance on the part of Pierce County to the Government of this territory prior to the date of this deed?

A. No, there had not.

The COURT. Well, now, be careful, Mr. Lawyer, when the term conveyance is used—do you appreciate what is meant by it?

WITNESS. I might explain further that by conveyance I assume you mean any other deed. That was the only instrument.

X Q. 54. That was the only instrument. The original agreement that the Secretary of War had with Pierce County in the State of Washington was that there should be a tract of land some 70,000 acres given to the United States for certain purposes, was there not?

A. Yes, sir.

X Q. 55. And under the act there was a special provision of just how the Government of the United States should derive the title to that land, was there not?

Mr. ANDREWS. It speaks for itself, that paper. I object to that under the best evidence rule.

34 The COURT. Oral evidence, in the existence of papers, is secondary.

Mr. ARNOLD. Very well. I will make it more specific.

X Q. 56. Under section 20 of the act relating to the transfer of this property to the United States Government it was provided that the donation from Pierce County and the title to all lands herein intended to be referred to should be conveyed to the United States by the acts of the officers of the committee representing Pierce County; is that so?

A. By the elected officers—the county commissioners of Pierce County.

X Q. 57. The county commissioners of Pierce County?

A. Yes.

X Q. 58. Right of eminent domain was never conferred upon the Government in relation to taking over this camp site, was it?

The COURT. Well, that is a pretty broad question. There were very broad powers all through the war, very broad powers exercised herein, had lots of trouble with it. The witness can hardly testify as to what authority the United States had. It is a matter for the consideration of the war defense act, a very broad provision of the statute. You should confine your inquiry to what he knows about it.

Mr. ARNOLD. Yes, your Honor.

X Q. 59. Did the State of Washington, by act or otherwise, confer upon the United States the right of eminent domain over the camp site which you have testified——

The COURT. That isn't the way it is done. The United States has the right of eminent domain and may exercise it, or it may proceed from a State and the State may exercise its right of eminent domain in aid of the party to whom it is donated.

X Q. 60. Did the United States exercise its power of eminent domain over any of this camp site?

A. It did not.

Mr. ANDREWS. I object to that line. There is nothing in the direct testimony bearing on that question. It is simply a conclusion of law as to——

The COURT. The United States has the power to take whatever is essential for national defense. There are certain ways in which it acts and it often acts before it proceeds in a particular way to compensate. The power of eminent domain is co-ordinate with the necessities of the war situation.

Mr. ARNOLD. I am trying to show by this witness, who is familiar with all the facts pertaining thereto, that the United States did not attempt to exercise its power of eminent domain.

The COURT. That is ambiguous. It may be exercised by going on and taking without any proceeding in court whatever.

Mr. ARNOLD. Does your Honor say that I haven't the right to show?

The COURT. If you want to show whether there were any proceedings in court, all right.

Mr. ANDREWS. Ask this witness what he did, as I had to, and not to characterize what the Government did.

X Q. 61. Did the Government in this case exercise the power of eminent domain over any of this territory?

Mr. ANDREWS. I object to that.

The COURT. I don't care for the witness' opinion on that. I want to know whether or not any proceedings were instituted in the court by the United States.

X Q. 62. Were any proceedings instituted in court by the United States in order to exercise the right of eminent domain over any of this territory?

Mr. ANDREWS. I want to know whether he represented the United States in any way to know.

The COURT. So far as you know, Mr. Witness

A. No.

The COURT. You needn't argue your case to your witness, because you have got to argue it to me subsequently.

Mr. ARNOLD. I trust your Honor will bear with me. I intend to keep within your Honor's desire, but at the same time I want to protect my client's interests as I see them.

The COURT. That is very proper

X Q. 63. So in this case this was merely an effort on the part of the State to present to the United States Government a tract of land of some 70,000 square acres in order that the Government might maintain a reservation there?

36 Mr. ANDREWS. I object to that as a conclusion.

The COURT. You may answer.

A. Yes, sir.

X Q. 64. But this gift was not consummated until the deed of October 1, 1919; is that so?

Mr. ANDREWS. I object to that again.

A. I think that deed closed the transaction.

X Q. 65. That deed completed the gift?

A. I said I thought the deed closed the transaction.

X Q. 66. Pierce County permitted the Government to erect barracks and to use this territory pending the termination of the gift; is that not so?

A. Well, Pierce County turned it over to the Government as soon as they obtained title to it. They exercised no further domain over it.

X Q. 67. What do you mean by "turned it over"?

A. Gave them possession.

X Q. 68. Permitted them to bring their troops there and to conduct maneuvers?

A. Do anything they pleased with it; gave them absolute possession of it, is what I mean.

X Q. 69. Gave them possession. At the time when this judgment was obtained for the Pierce County commission there was yet some thirty or forty thousand acres to be obtained before the completion of the gift in accordance with the understanding between Pierce County and the Secretary of War?

A. By judgment you mean a judgment in the Abrahamson case?

X Q. 70. Yes.

A. And the Nisqually case?

X Q. 71. Yes.

A. There was approximately 35,000 or 36,000 acres.

X Q. 72. More to come, and when you went to Washington, as you have testified, the Secretary of War refused to take a deed of the 30,000 acres which you had gained by condemnation proceedings?

A. No; that isn't accurate. It was deemed advisable, after discussing the matter, that it would be best to leave the matter lie until such time as we have all the property in question and cover it by one deed.

X Q. 73. Whom did you talk with when you were there?

37 A. I talked with Secretary Baker himself and I talked with General Jervey, who was head of the operations division of the General Staff, and also Colonel Hickman.

X Q. 74. What I wanted to find out was, did you talk with the Secretary himself?

A. Yes.

X Q. 75. And the Secretary said he could not accept a deed of the premises at that time?

A. I doubt whether that discussion was with the Secretary. I am pretty sure it wasn't.

X Q. 76. Who was that discussion with?

A. Primarily, the discussion was with General Jervey and Colonel Hickman.

X Q. 77. And did General Jervey say the War Department could not accept title to this land at that time?

Mr. ANDREWS. He didn't say that.

A. There wasn't any question—I didn't say they could not accept. We were simply discussing the best way to proceed with reference to this matter and it was decided by him, and agreed in by me, that that would be the best way to handle it.

The COURT. It was known to you both that the United States was to take possession?

WITNESS. Oh, yes.

The COURT. And you went on and offered a deed of this particular tract as I understand it?

WITNESS. Yes, I went down and offered title and then offered the deed.

The COURT. You had no deeds prepared?

WITNESS. No deeds prepared.

The COURT. Simply said you would prepare it and they postponed it until you had it all ready?

WITNESS. Yes. There was no controversy about it at all.

The COURT. They didn't reject anything which you offered them?

WITNESS. No, no. The letter of July 15 is the formal approval of everything that we offered.

X Q. 78. But under the agreement they could not accept a part, could they? It had to be some 70,000 acres, more or less, before the Government would accept this reservation?

38 A. The Act, Chapter 3 of the Laws of 1917, states that Pierce County is to get such lands as the Secretary of War might select. It was entirely within his discretion.

X Q. 79. And wasn't the original understanding, which was somewhat modified somewhat later, that this tract must be at least some 70,000 square acres, or 70,000 acres?

A. That was the understanding of December 2, 1917; yes, sir.

Mr. ARNOLD. Yes. I think that is all, if your Honor please.

The COURT. Any further questions?

Mr. ANDREWS. No further questions, Mr. Lyle.

WILL R. WHITE (sworn):

Q. 1. (By Mr. CHASTIAN.) Please state your name, location, and business.

A. I am located at Camp Lewis, Washington, First Lieutenant under the Quartermaster.

The COURT. You will have to speak more distinctly. What is your name?

WITNESS. Will R. White.

The COURT. What is your office?

WITNESS. First Lieutenant, Q. M. C.

The COURT. Stationed where?

WITNESS. Camp Lewis, Washington.

The COURT. And how long have you been at Camp Lewis?

WITNESS. Since June 17, 1917.

The COURT. Very well.

Q. 2. In what capacity were you employed at that time, June, 1917?

A. I was the civilian assistant to the engineer in the construction of Camp Lewis.

Q. 3. How long were you connected with that construction department or company as a civilian?

A. I was—I became a commissioned first lieutenant of Engineer's Reserve Corps on October 31, 1917.

Q. 4. State what time construction of Camp Lewis was begun and what took place for the succeeding months.

A. Well, we started construction as soon as we reached camp on June 17–18, the construction started, the preliminary work.

39 The COURT. 1917?

WITNESS. Yes, sir.

Q. 5. When was the construction of the camp completed by the construction contractor?

A. The work was not completed until along in 1918.

Q. 6. About what time in 1918?

A. Well, they were constructing all through the year 1918, some construction work. The camp was turned over for a division September 1st, 1917, but from time to time there were additional buildings such as warehouses and dry houses, and in addition the water and sewer system constructed, right through until the armistice was signed.

Q. 7. What division of the Army, if any, was organized at Camp Lewis, and when?

A. 91st Division, along about September, 1917.

Q. 8. Of approximately how many men was that division composed?

A. I can't state the exact number there was in the division, but we had at one time there 50,000 troops; at the time just prior to the time the 91st Division left Camp Lewis and before the 13th Division was formed, we had 50,000 men in Camp Lewis.

Q. 9. When was it the 91st Division left Camp Lewis.

A. July, 1918.

The COURT. Well, is it necessary to go into all this detail? There were a large number of men—were they all housed?

WITNESS. Yes.

The COURT. In tents or barracks?

WITNESS. Why, there were some few troops that were in tents, but the main body of men were in houses.

The COURT. Is there any dispute that a great amount of money was expended there?

Mr. ARNOLD. No, your Honor; no dispute the troops were there.

The COURT. What is the point—were the usual guards established?

WITNESS. Yes, sir.

The COURT. Were persons permitted to go upon the premises without permission?

WITNESS. There was no limitation except short periods as regards visitors in the camp. At different times we had the camp under quarantine when there was sickness, but those were for only short periods of time. The troops, however, were not permitted to leave.

The COURT. Was anything else going on on the premises except United States business?

WITNESS. Any business—there was not.

Q. 10. State, if you please, whether or not the territory including sections 12 and 13 in township 18 north, range 1 east, were being used in 1917 and 1918 by the Army for military purposes and maneuvers.

A. I can't specifically state that those two sections named by you were used in 1917, but I do know that they were used in 1918.

Q. 11. Beginning about what date, lieutenant?

A. Well, during the summer of—summer months of 1918; that would be along in June on through——

Q. 12. Prior to December—October 25, 1918?

A. Yes, sir.

Q. 13. Do you know whether or not there was a monument erected at the supposed spot of the death of Major Cronkhite?

A. Yes, sir.

Q. 14. State what you know about that.

A. Well, it is a concrete monument erected on the spot purported to be the spot where Major Cronkhite died.

Q. 15. What is the location of that monument? Can you point it out on this map?

(Witness does as requested.)

The COURT. I don't see that that helps us on this proceeding at all.

Mr. CHASTIAN. Your Honor, let me submit this: The lieutenant knows where that monument is located which is supposed to mark the spot of his death, and the Government proposes to prove by subsequent testimony that that is located at the spot where Major Cronkhite died, by a witness who was present at the time he died and who has since seen the location of the monument.

The COURT. I don't suppose the objection is as to any particular spot. As I understand, the objection simply goes to Camp Lewis.

41 Mr. ARNOLD. My objection goes to the whole camp, your Honor.

The COURT. This is a question of whether there is probable cause. The allegation in the indictment is as to Camp Lewis and we are not trying this particular spot in Camp Lewis. These objections all go to any jurisdiction that you can have to try a man for a murder anywhere within this place.

Mr. CHASTIAN. If the court please, there were some of these judgments covering a part of Camp Lewis Reservation.

The COURT. I so understand.

Mr. CHASTIAN. That were signed after the death of Major Cronkhite, and some of them, a large part of them, covering the first area, that were signed several months prior to his death. That is the only reason why we thought it was material at all—was the fact that some of the judgments condemning the land included in this deed of October 1, 1919, were actually signed by the court after the death.

The COURT. Do you propose to follow this up by showing the particular acquisition of this particular spot?

Mr. ANDREWS. We have already shown that first area, that first section, and we want to get that particular spot of death in that area somewhere.

Mr. CHASTIAN. If it were admitted it was within the first area, there would be no necessity of this proof.

Mr. ANDREWS. Will you admit it was in that area?

Mr. ARNOLD. I can't admit that.

Mr. ANDREWS. Well, we will have to prove it, then.

Mr. CHASTIAN. May I proceed?

The COURT. Well, there is a place where a monument has been erected said to be the place of death.

Q. 16. Where is that located: in what—in or near what?

A. It is on the section line between sections 12 and 13, township 18 north, range 1 east, Willamette meridian.

The COURT. On the section line?

WITNESS. On the section line.

Mr. ANDREWS. Put a cross on there, will you?

42 WITNESS. There is a cross on the map at the present time, a small cross.

Mr. ANDREWS. Put your initials against it, will you?

[Witness complies with request.]

Q. 17. (By Mr. ANDREWS.) Did you help build the monument or have something to do with it?

A. I helped manufacture the monument, but not the placing of it.

Q. 18. Now, relative to the placing of control over this area, the judge asked you what authority the Government exercised. Did they post guards and conduct that as a military camp—that is what I want to get at.

A. They did.

Cross-examination:

X Q. 19. (By Mr. ARNOLD.) Just one question, your Honor, please. How much constructing was done on this site prior to January 29, 1918?

A. The camp was practically completed.

X Q. 20. Completed before January 29, 1918?

A. Yes, 1918. Yes, there were additional buildings added from time to time, dryhouses and work of that kind, but the camp was practically completed.

X Q. 21. And this was all done before January 29, 1918?

A. January 29, 1918.

Mr. ARNOLD. No further questions, your Honor, please.

JOHN A. SMITH (sworn):

Q. 1. (By Mr. ANDREWS.) Major, you are connected with the Judge Advocate's Department?

A. I am.

Q. 2. How long have you been connected with the Judge Advocate's Department of the Army?

A. I have been located in the office of the Judge Advocate General since August, 1918.

Q. 3. Prior to that time you were connected with the Judge Advocate's Department?

A. As a reserve officer.

Q. 4. Yes. What were your duties in connection with the Judge Advocate's Department?

A. I was in the reservation title section of the Judge Advocate General's office, which has to do with all questions relating to
43 the acquisition or jurisdiction—acquisition of public lands and jurisdiction of the United States over the land under the control of the War Department.

Q. 5. Yes. When did you say you went there?

A. I went there, I think, the early part of August, 1918.

Q. 6. Did you ever have any conference with Mr. Lyle relative to the acquisition of these lands in Camp Lewis?

A. I did. After August, 1918, I believe I conducted all the negotiations with relation to the examination and approval of title in Camp Lewis, our military reservation. I wrote the letters and I had the conferences with him, I believe.

Q. 7. Did you finally pass upon this deed which was passed to this land in 1919?

A. I drew the deed.

Q. 8. You did?

A. Yes. I drew the deed after conference with Mr. Lyle. It was drawn under my supervision and subject to my direction.

Q. 9. Then you were not connected with the Judge Advocate's Department in the June prior to that when Mr. Lyle went to Washington?

A. I would not say that; but I was not in the office of the Judge Advocate General at that time. I was in Wyoming.

Q. 10. Then you had no personal conference with Mr. Lyle prior to the first of August, 1918?

A. No; none that I recall.

Mr. ANDREWS. That is all. I didn't know how early you came into this.

Cross-examination:

X Q. 11. (By Mr. ARNOLD.) Major, the United States mobilized its troops on camp sites belonging to the State governments throughout the whole of the United States, did they not?

A. Well, I can't testify that from my own knowledge because I didn't have charge of that feature of the case, although I might be able to state something about it.

X Q. 12. No. From the information that you obtained in your office, isn't that so?

A. I only had to do with matters wherein the United States had jurisdiction or where the United States exercised jurisdiction or had the title.

44 X Q. 13. Don't you know that as a matter of fact the United States constructed barracks on State camp grounds?

Mr. ANDREWS. I object to this line because I didn't examine on this. I just found out that he wasn't there until August, 1918, and then I let him go. That is all I asked him about.

The COURT. I don't think this is cross-examination.

Mr. ANDREWS. I had an idea he had been there longer.

Mr. ARNOLD. Very well, your Honor. No questions.

JOHN T. S. LYLE (recalled):

Mr. ANDREWS. I would say at this time, your Honor, that we reserve the right to produce the other witness that was expected from Washington to identify the place of the killing, who saw the killing, and to check up these map notations we have already had.

The COURT. Do you think the location of that is necessary on the present aspect of the case? The objection is as to the whole territory, the whole camp.

Mr. ANDREWS. Yes, that is true; and we have got the deeds and maps, and, if we fix this killing within that area covered by the deeds and maps, we have at least got a sequence—because there are two areas in this map—that is what confuses us.

Q. 80. (By Mr. CHASTIAN.) Referring to Defendant's Exhibit B, which is a photostat of the deed dated October 1, 1919, from Pierce County to the United States of America, there are exceptions made beginning on page 35, number 10, and going through number 11 on page 36, naming certain—going through section 12 on page 36, ending with 13—naming strips of land which had been established as public highway as designated on Exhibit A, which is a map attached to the deed naming the roads. Will you please state whether or not any of those public roads named in the deed as being excepted——

Mr. ARNOLD. Excepted—e-x?

Mr. CHASTIAN. Yes.

Q. 81. Excepted are located in or on sections 12 and 13, township 18 north, range 1 east, or on any of the adjoining tracts to those sections?

45 A. Well, the nearest tract that—none of the exceptions apply to sections 12 and 13 and the nearest that any of the exceptions apply to it is the right of way reserved to the Pacific Highway and the right of way of the Northern Pacific Railway, the nearest point of which is a mile and a half north of the north line of section 12.

Cross-examination:

X Q. 82. (By Mr. ARNOLD.) These sections that you have referred to as being excepted were within the territory where the 91st Division maneuvered and drilled prior to its leaving of Camp Lewis?

A. Some of them are and some of them are not.

X Q. 83. Some of them, and all of these sections are within the present site of Camp Lewis as deeded under this deed?

A. You mean by—what sections do you mean?

X Q. 84. The sections that you have just testified to that were excepted.

A. Well, they are not. The question related to the roads and rights of way, and so forth.

X Q. 85. All right—that are excepted in this deed.

A. Yes, sir.

Mr. ANDREWS. You mean those highways were excepted?

Mr. ARNOLD. Whatever tracts they were; I don't know. I haven't had an opportunity to study the deed.

Mr. ANDREWS. Well, I don't want to have him leave out of the deed all the land that is conveyed by it.

Redirect examination:

Q. 86. (By Mr. ANDREWS.) May I make sure as to those areas to which we have been directing our attention here, 12 and 13; they were finally conveyed to the Government?

A. Oh, yes.

Q. 87. This section 12 and section 13 which we have been talking about all day were finally conveyed to the Government by this deed?

A. Yes, sir.

Q. 88. And never went out of the Government's possession after the Government had been put into possession early in that year?

A. No.

Mr. ARNOLD. He hasn't said that.

Mr. ANDREWS. It is a conclusion. We haven't got a jury here: that is all.

46 The COURT. Is there any more testimony?

Mr. ANDREWS. Not to-day, your honor. The other witness will be produced.

Mr. ARNOLD. No more testimony at this time, your honor, please.

The COURT. Is there any occasion for more testimony? It is not the purpose to try the case on a removal proceeding or upon a habeas

corpus proceeding. The purpose is only not to give a removal where there is no probable cause and to require the showing of a probable cause and to enable a defendant to set up ground which he thinks negatives the existence of probable cause. The mere fact that these deeds passed at a later date is insufficient to negative probable cause if the Government was, as alleged in the indictment, in the exclusive control and jurisdiction of these premises. I call to your attention the query by the Supreme Court in the case of Holt against the United States, 218 United States at page 252: "Even if the evidence of the de facto exercise of exclusive jurisdiction was not enough, or if the United States was called on to try title in a murder case." Now the question of the jurisdiction—the only question raised here, the question of probable cause—Is there probable cause that this place was in fact under the jurisdiction of the United States under all the circumstances? This is a question which I should not deny a court of primary jurisdiction the right to try. I am satisfied that there is substantial ground that there was probable cause for the allegation here. We have had the authority of the State, and the authority of the county and the actions by the competent representative of the county, the taking possession, the fact that 50,000 men were there—of course, Mr. Arnold says there were large numbers of men on lands which had not become subject to the sole jurisdiction of the United States—before this thing is finally consummated through later deeds—and that is a very familiar situation with us. We have had cases here where all sorts of rights have been taken under necessity even before the war, and the taking so authorized may be complete for a
47 matter of jurisdiction of this character though no deeds were ever passed. As the statute says specifically——

Mr. ANDREWS. Section 20.

The COURT. "The consent of the Legislature of the State of Washington is hereby given to the United States to acquire by donation from Pierce County the title to all lands hereinbefore referred to." That is the grant of power. These are two distinct things. The passage of the deed is some evidence, but on the whole this case very strongly preponderates in favor of the United States upon the issue.

Mr. ARNOLD. Your honor will remember when this matter was first called to your honor's attention that I asked that the time be extended to give me an opportunity to go into the case more thoroughly.

The COURT. Yes.

Mr. ARNOLD. Contending that I had been engaged very closely in matters which had taken up most of my time, and the United states urged upon your honor that this matter be heard now in order that two or three witnesses that had come from Washington might not be obliged to return to Washington and then again appear here. I submit that we have had that much of the hearing and these witnesses have been heard, and in behalf of the prisoner I submit that his counsel should be given further time in which to ex-

amine the exhibits in this case which have come to his attention for the first time to-day. These letters were first asked for on my petition for subpœna duces tecum and then by the subpœna duces tecum which was submitted to your honor by the attorney for the United States. I therefore would move that this matter be continued for further hearing in order to permit counsel for the defendant to examine the exhibits in the case.

The COURT. Suppose you should find all sorts of things; you have got to go back to the primary facts, authorization by the State, authorization by the county, action by the county, and de facto possession by the United States followed later by a deed covering the entire tract and having a retroactive effect on the original in-
48 tention. You can't get around evidence of that strength by any mere contention that the deeds were not passed. You can't interpret the nonacceptance of the deed as a refusal of the deed or nonapproval of what has been done. Every lawyer has had cases where possession has been given long before the deeds were passed.

Mr. ARNOLD. Yes, but I would beg of your honor sufficient time to submit authorities. There can be no harm done to the United States by continuing this matter for two weeks.

The COURT. The proofs are closed?

Mr. ANDREWS. Except for that one witness, but that it seems to me is a small matter, your honor. It is the question of the exact spot and ——

The COURT. I must repeat, Mr. Andrews, that the objection does not go to any exact spot, it goes to the whole territory.

Mr. ANDREWS. I know it does.

Mr. ARNOLD. I ask, then, if your honor please, and move that the matter be continued for two weeks in order to give counsel for the defendant further opportunity to prepare himself in the matter in order to present the matter to your honor again.

The COURT. Well, what is the status of the case other than that? When is it desired to try this case?

Mr. ANDREWS. As speedily as possible, as soon as they can get the people moved there. It takes a lot of time to have these people moved to Washington to have this trial. As soon as they are removed to Washington it will be given a speedy trial; it is the desire of the Government to do so.

Mr. ARNOLD. I will call your honor's attention to the fact that there is a case of a similar kind in New York and it will be impossible to try this defendant until the other defendant is present. I assume that is so.

Mr. ANDREWS. I see no serious objection to continuance, although, as I say, and your honor knows, the proof is all in. It is a question of what it means.

The COURT. Well, if you want to file a supplementary brief ——

Mr. ARNOLD. I would like to address myself to your honor after examining the exhibits and going more thoroughly into the law.

49 The COURT. Well, I think perhaps ten days would not be an unreasonable time within which to file a supplementary brief.

Mr. ANDREWS. I would like to have an opportunity to look at the law myself. I have not had much opportunity. Ten days will be all right.

Mr. ARNOLD. I would like, if your Honor pleases, to carry it over until after Christmas if I could. Your Honor knows somewhat of the things that I am doing and if it is possible to continue it until after Christmas I would appreciate it.

The COURT. Suppose we say on or before December 30.

Mr. ARNOLD. Very well, your Honor.

The COURT. The supplemental briefs should be strictly confined to the question of whether or not there is probable cause.

Exhibits introduced in miscellaneous No. 3270, United States v. Roland R. Pothier.

[Memorandum.—The original exhibits are transmitted in accordance with order entered February 16, 1923. THOMAS HOPE, *Clerk.*]

In United States District Court.

Opinion denying petition for writ of habeas corpus.

January 11, 1923.

BROWN, J.: The questions arising on this petition are substantially the same as those disposed of by the opinion of this court upon petition for warrant of removal, in Misc. No. 3270, filed this day. A citation to show cause why the petition for the writ of habeas corpus should not be granted was issued, and the petition for warrant of removal and petition for writ of habeas corpus were heard together, counsel for Pothier submitting a single brief as to both questions.

It appearing that the indictment was by a court of competent jurisdiction, that there was probable cause for his commit-
50 ment by the commissioner, and that his imprisonment, restraint, and detention were in accordance with law—

The petition is denied.

In United States District Court.

Opinion granting petition for warrant of removal.

Filed January 11, 1923.

BROWN, J.: This is a petition by the United States attorney for this district for a warrant for removal of Roland R. Pothier to the Southern Division of the Western District of Washington, pursuant to the provisions of section 1014, Rev. Stats. (sec. 1674

Comp. Stats. 1916), for trial upon an indictment returned in the District Court of the United States for that district, charging that said Roland R. Pothier, on about the 25th day of October, A. D. 1918, "within and on lands theretofore acquired for the exclusive use of the United States, and within the exclusive jurisdiction thereof, and within the Southern Division of the Western District of Washington, to wit, within and on the Camp Lewis Military Reservation," etc., did feloniously kill and murder one Alexander P. Cronkhite.

The main objection to granting the warrant is that the Federal court of the district to which removal is sought has no jurisdiction. While it is true that in order to establish the crime against the United States it must appear that the place of its commission was "territory within the exclusive jurisdiction of the United States," yet the District Court where the indictment is pending has full jurisdiction to try and determine this fact, as well as other allegations of the indictment. The denial of this allegation as to the place of commission does not raise a question properly of the jurisdiction of the trial court, but goes to the merits raising the question whether the act charged was a violation of Federal Law. Louie v. United States, 254 U. S. 548. In view of this late decision of the Supreme Court it is unnecessary to cite the earlier cases in which this distinction was pointed out.

Though the evidence presented at the hearing seems to have
51 been relied upon to show that the trial court would have no jurisdiction, we may consider also whether it overcomes the prima facie effect of the indictment upon the question of probable cause. Hastings v. Murchie, 219 Fed. 83, 88.

The evidence presented at the hearing comprised, in addition to the certified copy of the indictment, a large number of documents and the oral testimony of three witnesses, all relating to the question whether Camp Lewis was land "theretofore acquired for the exclusive use of the United States, and under the exclusive jurisdiction thereof." As to the other allegations no evidence was presented which affected the prima facie case. See Gayon v. McCarthy, 252 U. S. 171; Tinsley v. Treat, 205 U. S. 20, 31.

The defendant introduced a photostatic copy of a deed by Pierce County to the United States, dated October 1, 1919 (nearly a year after the alleged murder), purporting to convey certain lands to the United States for military uses; and also a copy of an act of the Legislature of Washington passed January 27, 1917, called chapter 3, Washington Laws 1917, constituting Pierce County "as the arm and agency of the State" to condemn certain lands in that county and to donate them to the United States for military purposes.

The argument of the defense is that by the terms of the statute the passing of the deed is a prerequisite to the exclusive jurisdiction of the United States, and that as the deed postdates the time of the alleged murder the United States did not then have exclusive juris-

tion over the lands conveyed by said deed. But the evidence ows also that before the passage of the deeds, and before the date the alleged murder, Pierce County, acting as the arm and agent the State, had acquired by condemnation, and had turned over the United States military authorities, many tracts of land com- ised within the Camp Lewis Military Reservation, which had en selected by a representative of the Secretary of War, and ich, when donated to the United States, the Secretary of War had been authorized to accept. Buildings had been erected and the camp permanently occupied before January 29, 1918, and before July, 1918, there were 50,000 men in camp.

There is much evidence tending to show that as to a number of tracts of land comprised in the camp there was, before the date the alleged crime, a practical consummation of the donation, l that the agents of the county and of the United States had done that it was necessary to do in order to vest title and exclusive isdiction in the United States, save the execution and recording the deeds whereby the title of the United States should be evi- ced.

The contention of the United States that the evidence of de facto rcise of exclusive jurisdiction is sufficient in itself to show prob- e cause cannot be disregarded, in view of the quære in Holt v. ited States, 218 U. S. 245, 252:

"The documents referred to are not before us, but they properly re introduced, and so far as we can see justified the finding of jury, even if the evidence of the de facto exercise of exclusive isdiction was not enough, or if the United States was called on to title in a murder case."

The United States attorney urges that the expression "to be evi- ced by the deed or deeds of Pierce County," etc., indicates that the d was not to be the conveyance but only evidence of a prior dona- n. The defendant, however, urges that the assent of the State the exercise of legislative jurisdiction is limited to lands which e been conveyed by deed.

The United States attorney also contends that the testimony and uments offered by defendant are insufficient, since the defendant failed to prove that the deed described all the lands in Camp vis Military Reservation, and suggests that there are indications he documentary evidence of the probability that some land not ated by Pierce County may be included within the reservation. t the hearing the defendant's contentions as to legislative juris- diction of the United States went to the whole reservation; some 70,000 acres, more or less. There was no agreement or definite evidence as to the exact locus in quo. It is, therefore, practicable for this court to go into the details of the acquisition the county, the transfer of possession to the United States, and uses of the different tracts which were from time to time added he reservation. In the trial court, upon the establishment of the

exact place of the alleged murder, many of the questions now suggested will disappear, and the inquiry be limited to a small area.

The jurisdiction of the trial court being clear, and there being many disputed questions of fact and law, it is evident that this court cannot properly assume the functions of the trial court. Henry v. Henkel, 235 U. S. 228, 229.

I am of the opinion that the defendant has failed to overcome the prima facie case made by the indictment, and that the evidence fails to show the want of probable cause.

A warrant for removal may issue in accordance with the prayer of the petition.

In United States District Court.

Order of court.

January 30, 1923.

This cause came on to be heard upon the petition, order to show cause why the writ should not issue, the oral objections of the respondents and the United States to the sufficiency of said petition, and upon the evidence introduced in the correlative matter of the petition of the United States attorney for warrant of removal of said Roland R. Pothier, was argued by counsel and upon consideration thereof, it appearing (1) that said petition failed to state sufficient grounds for the granting of the writ of habeas corpus and (2) that the imprisonment, restraint, and detention of said Roland R. Pothier were in accordance with law, it is hereby ordered, adjudged, and decreed that the petition for writ of habeas corpus be and the same hereby is denied and dismissed.

54 Entered as the order and decree of this court, January 30, A. D. 1923.

THOMAS HOPE, *Clerk.*

Enter as of January 11, 1923.

ARTHUR L. BROWN,
United States District Judge.

JANUARY 30, 1923.

In United States District Court.

Petition for order allowing appeal.

In the matter of the petition of Roland R. Pothier for writ of habeas corpus and certiorari.

The petition of the above-named petitioner for an order allowing an appeal to the Supreme Court of the United States for the final order hereinbefore entered in this action respectfully shows:

(1) That the petitioner and appellant above named is a resident of the city of Central Falls, in the District of Rhode Island, United States of America, and was such at all times hereinafter mentioned.

(2) The petitioner and appellant above named, feeling himself aggrieved by the final order herebefore made and entered by this court of the eleventh day of January, 1923, whereby it was ordered that the application for a writ of habeas corpus directed to William R. Rodman, United States marshal in and for the District of Rhode Island, requiring said marshal to bring and have your petitioner before this court, and that his application for a writ of certiorari directed to the Hon. Henry C. Hart, United States commissioner for the District of Rhode Island, commanding him to return all proceedings against your petitioner to the said District Court for the District of Rhode Island forthwith, for such action as might be proper in the premises, being denied, your petitioner's petition for a writ of habeas corpus discharged, now comes Roland R. Pothier, petitioner and petitions the court for an order allowing him to
55 prosecute an appeal from said final order to the Supreme Court of the United States under and according to the laws of the United States in that behalf made.

Your petitioner is advised by counsel that there are grave doubts as to whether the proceedings referred to in the petition have not infringed the constitutional rights of your petitioner, and whether the commitment of your petitioner and the restraint of his person referred to in said petition is not without authority of law, and whether the said United States commissioner before whom your petitioner was arraigned as set forth in said petition had jurisdiction to commit your petitioner, and is further advised by his counsel that he is of the opinion that your petitioner's constitutional rights have been infringed by the said proceedings and that his detention under and by virtue of the said commitment issued by the said commissioner as referred to in the said petition and the denial of his discharge upon said petition for writ of habeas corpus and certiorari in violation of his right under the Constitution of the United States, and your petitioner desires in good faith to submit a constitutional question and such other questions as are pertinent thereto, or involved therein, to the Supreme Court of the United States for their determination.

And for the leave asked for herein, your petitioner will ever pray, etc.

Dated Howard, R. I., January 18, 1923.

ROLAND R. POTHIER.

DAVIS G. ARNOLD,
Attorney for Defendant.

[Jurat showing the foregoing was duly sworn to by Roland R. Pothier omitted in printing.]

56 Subscribed and sworn to before me this eighteenth day of January, 1923.

[SEAL.] PERCY J. CANTWELL,
Notary Public.

Appeal allowed, January 30, 1923.

ARTHUR L. BROWN, *J.*

In United States District Court.

Assignment of errors.

In the matter of the petition of Roland R. Pothier for a writ of habeas corpus and certiorari.

Comes now the petitioner and files the following assignment of errors upon which he will rely upon his prosecution of the appeal from the final order made in the District Court of the United States for the District of Rhode Island on the eleventh day of January, 1923, in the above-entitled cause, dismissing the petition for writ of habeas corpus and certiorari:

(1) That the said court erred in holding that the alleged indictment in said record contained set forth a crime or offense against the laws of the United States.

(2) That the said court erred in holding that any of the counts of the said indictment charged a criminal offense.

(3) That the said court erred in not holding that the petitioner was not legally charged with any crime against the United States.

(4) That the said court erred in not finding that the petitioner did not commit any offense against the United States.

(5) That the said court erred in not holding that the petitioner was not a fugitive from justice within the meaning of the Constitution and laws of the United States.

(6) That the court erred in not holding that the petitioner was not legally charged with the crime of murder as defined in the Federal Penal Code.

(7) That the said court erred in not holding that the United States District Court for the Western District of the State of Washington did not have jurisdiction of the crime of murder, as charged.

57 (8) That the said court erred in not holding that the land upon which it is alleged that said crime was committed was not reserved or acquired for the exclusive use of the United States and under the exclusive jurisdiction thereof.

(9) That the said court erred in not holding that the land upon which it is claimed that said crime of murder was commited was under the exclusive jurisdiction of the State of Washington.

(10) That said court erred in not finding that Camp Lewis Reservation, where it is alleged the crime of murder was committed, was not under the exclusive jurisdiction of the United States.

(11) Said court erred in finding that there was probable cause to warrant removal of the said petitioner from the District of Rhode Island to the Southern Division of the Western District of Washington.

(12) That said court erred in finding that the United States exercised exclusive jurisdiction over Camp Lewis Reservation at the

time when it is alleged the crime of willful murder was commited by your petitioner.

(13) That said court erred in finding the petitioner had failed to overcome the prima facie case made by the indictment, and that the evidence failed to show the want of probable cause.

(14) That said court erred in finding that the jurisdiction of the trial court was clear, and that this court could not properly assume the functions of the trial court in ascertaining the title to Camp Lewis Reservation on the date when it was alleged your petitioner committed the crime of willful murder.

(15) That the said court erred in dismissing the petitioner's petition for writ of habeas corpus and certiorari.

(16) That said court erred in refusing the discharge of the said petitioner.

(17) That the said court erred in holding that the restraint of the petitioner's liberty is legal.

(18) That the said court erred in holding that the restraint of the petitioner is not a violation of his constitutional rights under the Constiution of the United States.

58 (19) That the said court erred in failing to hold that it has been conclusively established that your petitioner had not committed any offense against the United States triable in the Southern Division of the Western District of Washington.

(20) Said court erred in not holding and deciding that your petitioner was deprived of his liberty without due process of law within the meaning of the fifth amendment of the Constitution of the United States.

(21) That the said court erred in declining to hold and decide that your petitioner's detention is in violation of article 5 of the amendments to the Constitution of the United States.

(22) That said court erred in failing to hold and decide that the restraint of your petitioner is in violation of the provisions of article 6 of the amendments of the Constitution of the United States, for the reason that upon the proof before the commissioner and before the said court that the offense charged in the indictment was not committed upon territory within the exclusive jurisdiction of the United States in the Southern Division of the Western District of Washington.

(23) That the said court committed other errors appearing on the record.

Therefore, your petitioner prays that the order dismissing the said petition for writ of habeas corpus and certiorari be reversed and that your petitioner be discharged from custody.

ROLAND R. POTHIER.

DAVIS G. ARNOLD,
Attorney for Petitioner.

Said petition for appeal was allowed on January 30, 1923, and citation issued returnable to the Supreme Court of the United States on the twenty-eighth day of February, 1923:

In United States District Court.

Order staying proceedings on warrant of removal.—Miscellaneous No. 3270.

Entered January 30, 1923.

All proceedings in this cause are hereby stayed until further order.

59 Entered as the order of this court, January 30, A. D. 1923.

THOMAS HOPE, *Clerk.*

Enter January 30, 1923.

ARTHUR L. BROWN,
United States District Judge.

In United States District Court.

Order of court.

January 31, 1923.

This cause coming on to be heard on the petitioner's affidavit of poverty, under United States Statutes July 1, 1892, chap. 209, sec. 1, 27 Stat. 252, amended June 25, 1910, chap. 436, 36 Stat. 866; whereupon the court being advised, it is ordered that the defendant be allowed to prosecute his appeal without making a deposit or executing bond for costs, because of his poverty as alleged in said affidavit; and it is further ordered that all judicial officers who have occasion to perform services herein shall perform same as if the deposit for costs or security for costs had been given.

Entered as the order and decree of this court, the thirty-first day of January, A. D. 1923.

THOMAS HOPE,
Clerk.
ARTHUR L. BROWN,
U. S. District Judge.

JANUARY 31, 1923.

In United States District Court.

Order for transmission of original exhibits introduced in miscellaneous No. 3270.

February 16, 1923.

It is hereby ordered, adjudged, and decreed that the clerk of the court be authorized to transmit the original exhibits introduced in

Miscellaneous No. 3270, United States v. Roland R. Pothier,
60 petition of Norman S. Case, to the United States Supreme Court, with the record in the above-entitled case, as indicated by No. 6 on the præcipe as filed in said case.

Entered as the order and decree of this court, February 16, A. D. 1923.

THOMAS HOPE,
Clerk.
ARTHUR L. BROWN,
United States District Judge.

FEBRUARY 16, 1923.

In United States District Court.

Præcipe.

The petitioner-appellant indicates the following as portions of the record to be incorporated in the record of transcript on appeal:

1. Petition for writ of habeas corpus and certiorari.
2. Citation to show cause why writ should not issue, and return thereon.
3. Petition of Norman S. Case, United States attorney, for warrant of removal, Miscellaneous 3270.
4. Citation to show cause why warrant should not issue, and return thereon.
5. Transcript of proceedings taken in the United States District Court for the District of Rhode Island, December 11, 1922, Miscellaneous 3270.
6. Exhibits introduced in Miscellaneous No. 3270, United States v. Roland R. Pothier, petition of Norman S. Case.
7. Opinion on petition for writ of habeas corpus and certiorari.
8. Opinion on petition of Norman S. Case, United States attorney, for warrant of removal, Miscellaneous No. 3270.
9. Order dismissing the petition for writ of habeas corpus and certiorari.
10. Petition for order allowing appeal, with order allowing appeal.
11. Assignment of errors.
12. Order staying proceedings in Miscellaneous No. 3270, pending decision on appeal.
13. Order on petitioner's affidavit of poverty.
61 14. Order for transmission of original exhibits introduced in Miscellaneous No. 3270.
15. Præcipe.
16. Citation on appeal and acknowledgment of service.
17. Clerk's certificate.

DAVIS G. ARNOLD,
Counsel for Petitioner.

Due and legal service of the within præcipe is hereby acknowledged this twelfth day of February, A. D. 1923.

NORMAN STANLEY CASE,
United States Attorney.

Supreme Court of the United States.

Citation on appeal.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to William R. Rodman, marshal of the United States for the District of Rhode Island, greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, in the city of Washington, District of Columbia, on the twenty-eighth day of February next, pursuant to an appeal duly obtained from a decree of the District Court of the United States for the District of Rhode Island, wherein Roland R. Pothier is appellant and you are appellee, to show cause, if any there be, why the said decree, entered against the said appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Arthur L. Brown, judge of the District Court of the United States for the District of Rhode Island, this thirtieth day of January, in the year of our Lord one thousand nine hundred and twenty-three.

ARTHUR L. BROWN,
United States District Judge.

62 UNITED STATES OF AMERICA,
District of Rhode Island, ss:

PROVIDENCE, R. I., *January 31, 1923.*

Due and legal service of the within citation is hereby accepted.

HAROLD A. ANDREWS,
Assistant U. S. Attorney for District of Rhode Island,
Attorney for Respondent.

WILLIAM R. RODMAN,
United States Marshal.

District Court of the United States, District of Rhode Island.

Clerk's certificate.

I, Thomas Hope, clerk of the District Court of the United States for the District of Rhode Island, do hereby certify that the foregoing is a true copy of the record in accordance with the præcipe filed in a clause entitled:

[Title omitted.]

in said District Court determined, together with the petitioner's petition for appeal, assignment of errors, order on petitioner's affidavit of poverty, and the original citation on appeal with acknowledgment of service thereon.

In testimony whereof I hereunto set my hand and affix the seal of said court, at Providence, in said district, this twenty-first day of February, A. D. 1923.

[SEAL.] THOMAS HOPE, *Clerk.*

63 EXHIBITS.

United States Exhibit No. 1.

[Memo.—Copy of portions of this exhibit are here omitted as they are printed on pages 7 to 10, inclusive, as Exhibits B and C, attached to the petition for writ of habeas corpus and for writ of certiorari.]

Marshal's return.

WESTERN DISTRICT OF WASHINGTON, *ss:*

I hereby certify and return, that on the 13th day of October, 1922, I received the within bench warrant and that after diligent search I am unable to find the within-named defendants Roland R. Pothier within my district.

E. B. BENN,
United States Marshal.
By FRANK E. BURROWS,
Chief Deputy United States Marshal.

UNITED STATES OF AMERICA,
Western District of Washington, ss:

I, F. M. Harshberger, clerk of the District Court of the United States for the Western District of Washington, do hereby certify that I have compared the foregoing copy with the original indictment and bench warrant and return in the foregoing-entitled cause, now on file and of record in my office at Tacoma, Washington, and that the same is a true and perfect transcript of said original and of the whole thereof.

Witness my hand and the seal of said court, this 13th day of October, 1922.

F. M. HARSHBERGER, *Clerk.*
By ALICE HIGGINS, *Deputy.*

64 *United States Exhibit No. 2.*

LAW OFFICES OF LYLE & HENDERSON,
TACOMA BUILDING,
Tacoma, Washington, June 27, 1918.

Honorable NEWTON D. BAKER,
Secretary of War, Washington, D. C.

DEAR SIR: Referring to the proposition contained in your letter of December 2, 1916, addressed to Stephen C. M. Appleby as chairman of a committee of citizens of Pierce County, State of Washington, relative to a tract of land of approximately 70,000 acres which Pierce County proposed to donate to the United States as a site for a permanent mobilization, training, and supply station for the Puget Sound area in the vicinity of American Lake, State of Washington,

I have to advise that Pierce County has instituted condemnation proceedings to acquire all of said lands, two of which proceedings are already closed, so that Pierce County has at this date secured title to 36,930 acres of the lands required.

In the letter of December 2, 1916, above referred to, it is provided that Pierce County shall tender a valid title to the lands proposed to be donated and further that "it is understood that the title so conveyed to the United States must be approved by the Attorney General of the United States as required by section 355, Revised Statutes of the United States." The act of Congress of July 2, 1917, as amended suspended the operation of section 355, supra, during the period of the war and would seem to cover this transaction if land is tendered before the expiration of the war.

The terms of the proposition of December 2, 1916, and the provisions of chapter 3, Laws of 1917, State of Washington, provide that the conveyance shall be made by one deed. As title to the entire area has not as yet been secured, a deed can not be tendered at this time. However, Pierce County has already expended more than a million and a quarter of dollars in securing the titles already obtained; and in view of the fact that all the title will be based on condemnation proceedings, it seems prudent at this time to submit the title obtained by one of the condemnation proceedings for examination by your legal department. As all the condemnation proceedings are on the same plan we can learn whether the manner of obtaining our title is approved and if not, the objections can be corrected while the subsequent condemnation proceedings are being concluded and while funds are available for that purpose.

65

Accordingly I have chosen the first proceeding known as Pierce County ex rel. Thomas H. Bellingham, James R. O'Farrell, and James W. Slayden, county commissioners of Pierce County, petitioners, vs. John August Abrahamson et al., respondents.

The number of acres covered by this proceeding is 33,463.78. Cost of the land exclusive of expenses and court costs $1,125,176.74.

I herewith submit as evidences of the title the following documents:

(1) Printed copy of notice served on all defendants.

(2) Exemplified copy of affidavit for publication of notice.

(3) Exemplified copy of published notice with proof of publication.

(4) Exemplified copy of judgment of public use and necessity and adjudging that all parties interested have been served with notice as required by law.

(5) Exemplified copies of judgments on awards and judgments vesting title in fee simple in Pierce County.

(6) Map showing land acquired by the proceedings.

The above documents are submitted with the idea that they will become part of the records of your department and therefore need not be returned with the exceptions that I request permission to

take out the exemplified copies of the judgments on awards and judgments vesting title in fee simple in Pierce County so that I may have them recorded in the office of the county auditor of Pierce County. They are bound together in one volume for this purpose in order that the county auditor may more readily indicate to you that they have in fact been recorded.

There were 589 tracts of land condemned, which represent 589 separate awards and 589 separate titles, as a part of the office system the data relating to each tract was placed in separate envelope, 9 x 15 inches in size. These envelopes with their contents placed in filing order occupy about four feet of space and weigh ap-
66 proximately seventy-five pounds. I have brought them with me and submit them for your inspection with the thought that perhaps it would be best to keep them on permanent file at Tacoma, Washington.

As part of our system of making service on the owners and parties interested, we compiled a docket in which we keep a separate record of all the proceedings as to each party. As this is likewise bulky I submit it for your inspection with the suggestion that this record likewise become a permanent record at Tacoma, Washington.

All our condemnation proceedings were had pursuant to the provisions of chapter 3, Laws of 1917, State of Washington, so for your convenience, I have attached a copy of the law.

Respectfully submitted.

J. T. S. LYLE,
Special Attorney and Official Representative of Pierce County.

Received A. G. O., Jun. 27, 1918.
601.1 American Lake, Wash. (Misc. Div.). 1st ind.
A. G. O., June 27, 1918—To the Judge Advocate General.
2 incls. Synopsis made. CHA:IM.
Received Jun. 28, 1918. J. A. G. O. M.

United States Exhibit No. 3.

[Office of the Judge Advocate General, 80-212, 80-816.1. War Department, Dec. 28, 1916.]

WAR DEPARTMENT,
OFFICE OF THE JUDGE ADVOCATE GENERAL,
Washington, December 20, 1916.

Memorandum for the Secretary of War.

I am returning herewith certain telegraphic correspondence left with me this morning by Mr. Lyle, attorney for Pierce County, Washington, and who is representing that county in the matter of the proposed donation of about 70,000 acres of land within the county to the United States for mobilization purposes. In this
67 matter we are acting under the authority of the act of August 29, 1916, which provides that:

"The Secretary of War is hereby authorized to accept for the United States from any person such tract or tracts of land suitable and desirable in his judgment for permanent mobilization, training, and supply stations; and he is directed to investigate and report to Congress as soon as practicable what additional tracts are necessary for said purposes, for use by the National Guard and by the Regular Army, and the probable cost of the same."

In a letter heretofore sent to Mr. Appleby you have represented to him in effect that the land was to be acquired primarily for the purposes of the Regular Army; that there were certain auxiliary uses to which the land could be put under the authority of legislation, and you cited that legislation. You concluded the letter with the statement that it must be understood that the donation was upon the condition that the primary uses for which the lands were intended were Regular Army uses, and that the auxiliary uses listed by you must yield to the primary uses whenever, in your judgment, it was necessary in the interest of the instruction of Regular Army troops.

In view of the language of the statute above quoted, I am inclined to believe that your letter went further than was required, as the statute expressly provides for use by the National Guard as well as by the Regular Army. It has been represented to me by Mr. Lyle that it will facilitate the legal proceedings to be resorted to for the acquisition of this property if your proposition could be restated in the form proposed in the attached memorandum. I do not think that any legal question is presented. The kind of title that you are to accept is not prescribed by statute law. You are authorized to accept donation of a qualified title if it will conserve the purposes of the statute; and the only question the Attorney General has before him when you refer the matter to title to him—as you must do under section 355, Revised Statutes—is whether or not you have evi-
68 dence of the title you intended to acquire. It need not be a fee-simple title. It is therefore a question of policy, rather than one of law; whether you will make a restatement of the purposes as now proposed by Mr. Lyle.

In saying above that no legal question arises, I mean to speak from the War Department point of view alone. I am not unmindful of the fact that Mr. Lyle is seeking to establish a county purpose in order that he may have standing before the courts under existing State law in the condemnation proceedings that he proposes to institute. He thinks that the restatement which he has submitted will satisfy the requirements of State statutes that a county purpose must exist, and I see no legal objection to your making this restatement, although there may be objections of policy which will be presented to you by the Chief of Staff.

If we accept the donation of the land on the terms and conditions proposed, the act of the State legislature approved January 23, 1890 (Pierce's Washington Code, 1905, sec. 8900), operates to vest exclusive jurisdiction in the United States over the tract of land acquired. Whether or not a county purpose exists where jurisdiction

of State and county does not exist is a question with which Mr. Lyle will have to deal before the State courts in which he institutes his condemnation suits.

JUDGE ADVOCATE GENERAL.

United States Exhibit No. 4.

ESB: EG (JAG 601). J. A. G. O., Jul. 1, 1918.
JUNE 29, 1918.

Memorandum for the Chief of Staff.

Subject: Modification of agreement entered into by the Secretary of War and Pierce County, Washington, December 2, 1916, including the question of Nisqually Indian Reservation land.

1. The views of this office are desired regarding the proposed modification of the agreement entered into by the Secretary of War and Pierce County, Washington, December 2, 1916, including the question of Nisqually Indian Reservation land.

In his letter of June 21, 1918, Mr. J. T. S. Lyle, special attorney and official representative, Pierce County, Washington, requests that the proposition outlined in the letter of December 2, 1916, of the Secretary of War be modified so as to conform to the modifications required by changed conditions as hereinafter set forth, the modifications to be as follows:

(a) By approving the selection and acquisition of the lands already obtained as set forth on the map marked "A" accompanying the letter.

(b) By approving the selection and plan of obtaining the remainder of the lands as set forth on the map attached to his letter marked "B."

(c) That if the $2,000,000 of Pierce County is exhausted, after first deducting the expenses, before the full 70,000 acres are acquired, Pierce County shall nevertheless be deemed to have in all respects complied with the requirements of the authorization outlined in the letter of the Secretary of War dated December 2, 1916.

It would appear from the letter of June 21, 1918, from Mr. Lyle, as well as from other sources, that subsequent to the date of the letter of December 2, 1916, the location of a training camp (Camp Lewis) for units of the National Army on parts of the land colored in yellow on the map referred to in said letter of December 2, 1916, necessitated requests for other more valuable lands which had been designated in pink on said map as not being a part of the project; that such requests were made by the official representatives of the Secretary of War for military reasons; that Pierce County has already acquired the title to such lands, together with other lands marked in yellow on said map, the aggregate area at this time being 53,930 acres; that another condemnation proceeding is now pending to acquire the remainder of the tract, which will include other lands

marked in pink on said map: that the estimated cost of ac-
70 quiring the lands designated in yellow on said map was $2,000,000, which was the amount authorized by the electors of the county and the amount of indebtedness by the act of the Washington Legislature, chapter 3, Laws of 1917; that in the opinion of Mr. Lyle if the land to be acquired had been confined to the areas designated in yellow on said map the approximate acreage of 70,000 acres could be obtained for less than the $2,000,000, but since the new areas acquired, as above set forth, have cost $297,136, to which will be added other pink areas not to be taken, Mr. Lyle doubts whether the funds now remaining will be sufficient to acquire the full area of approximately 70,000 acres as contemplated in the proposition contained in the said letter of December 2, 1916, and that Mr. Lyle estimates the amount of the fund remaining with which to pay for the land yet to be acquired to be $600,000 and that as a plan for using the available funds for acquiring the remainder of the ground which is most desirable for the purposes of the United States he has submitted a map, attached to his letter, marked "B," prepared by Captain Howard M. Smitten, Q. M. C., Camp Lewis, the official representative of the Secretary of War to select the land upon which is marked the land next to be acquired in zones in the order designated on the map which is to be condemned in such order until the total area is secured or until the fund is exhausted, after first deducting the expenses of acquiring the land.

2. 3,200 acres of alloted land in the Nisqually Indian Reservation, as shown on map attached, was included in the transaction made by Pierce County, Washington, and there was a clause in the agreement of December 2nd, above referred to, which would permit these Indian lands and all other lands secured in this connection to revert to Pierce County, Washington, in the event the War Department did not continue the use of the property for military purposes. The Indian Bureau, it is stated, was not aware of this clause, and when they agreed to part with these lands at $75,840 were of the opinion that it was to be deeded in fee simple to the United States without
any limitations whatever as to their use. The Indian Bureau
71 (Dr. Wooster) states the land was worth more than the appraised value and that there is a probability of it containing minerals of various classes that might be useful to the United States in connection with the manufacture of explosives. But notwithstanding this view of the Indian Bureau as to the value of these lands it would appear from the best information obtainable that the price paid was fair and reasonable. To meet, however, the views of the Indian Bureau it has been suggested that there be a modification of the terms of the letter of December 2, 1916, so as to eliminate the clause for the reversion of the lands to said county in the event the War Department, at any time, should no longer use the same for its purposes, and that this department, when the modification is agreed to, will refund to the treasurer of Washington County the

purchase price thereof, viz, $75,840, such sum being the aggregate sum of the judgment on the awards for such lands, with the understanding that the money so refunded shall be used by Pierce County in paying judgments entered for the taking of other lands in such county pursuant to the provisions of chapter 3, Laws of 1917, State of Washington. The effect of the proposed modification would be to have lands condemned and judgments entered for the taking thereof to the extent of $2,075,840.

This proposed plan in the opinion of this office is open to very serious objection.

3. Section 2 of the act of the Legislature of Washington, approved January 27, 1917, authorizing the county of Pierce to acquire by condemnation or otherwise lands in Pierce County and convey the same to the United States provided:

"That there is hereby imposed upon the county of Pierce, in the State of Washington, an indebtedness not exceeding, exclusive of interest, two million dollars, and the county commissioners of such county, acting as an arm and agency of the State are hereby directed to incur an indebtedness not exceeding, exclusive of interest, two million dollars, with which such county, as an arm and agency of the State, is hereby required to acquire by condemnation or otherwise, land in Pierce County, Washington, aggregating ap-
72 proximately seventy thousand acres, at such location or locations as may have been or may be hereafter from time to time selected or approved by the Secretary of War (of the due making of which selection the determination of the county commissioners of such county shall be conclusive) and convey all of such lands to the United States to be used by the United States for any or all such military purposes, including supply stations, the mobilization, disciplining, and training of the United States Army, State militia, and other military organizations, as are now or may be hereafter authorized or provided by or under Federal law, said indebtedness to be evidenced by negotiable bonds of Pierce County, payable in not more than twenty years, with interest not exceeding five per centum per annum payable annually."

This section empowers the county of Pierce to convey these lands to the United States "for any or all such military purposes, including supply stations, the mobilization, disciplining, and training of the United States Army, State militia, and other military organizations, as are now or may be hereafter authorized or provided by or under Federal law. * * *." Thus it is seen that the act in terms defines and limits the purposes and uses for which the land conveyed may be used. It is doubtful, therefore, if the power rests in Pierce County by virtue of this act to convey these lands to the United States without regard to the limitation, which is imposed by section 2 of the said act.

The plan proposed is objectionable on the further ground that it would seem that the county of Pierce is without the authority to

be reimbursed the sum of $75,840 and use this money for the purpose of acquiring additional land. The act imposes on Pierce County an indebtedness of $2,000,000 for the acquisition of lands and contemplates the condemnation of lands, not exceeding in value the amount of the indebtedness authorized, while the plan, if adopted, would result in the condemnation and acquisition of lands of the value of $2,075,840.

4. For the reasons stated the conclusion of this office is that
73 the proposed plan is of doubtful legality and should not be adopted.

5. Originally the acquisition of the lands marked in yellow on the map, approximately 70,000 acres, was contemplated and the sum of $2,000,000 was authorized for the payment therefor; and Mr. Lyle says that these lands with this acreage could have been secured for less than the sum mentioned. For military reasons, upon request by the official representatives of the Secretary of War other more valuable lands not included in the original project were substituted for certain of the lands designated in yellow on the map. Because of the acquisition of these more valuable lands and the contemplated acquisition of other more valuable lands not included in the original plan, it would appear that the fund of $2,000,000 authorized probably will not be sufficient to acquire the full area of 70,000 acres. It is apparent that the changes made in the plans as originally contemplated were made in the interest of the War Department and upon requests of official representatives of the Secretary of War. Accordingly, it is the view of this office that the proposition outlined in the letter on December 2, 1916, should be modified as requested as follows:

(a) By approving the selection and acquisition of the lands already obtained as set forth on the map marked "A" accompanying the letter dated June 21, 1918, of Mr. J. T. S. Lyle;

(b) By approving the selection and plan of obtaining the remainder of the lands as set forth on the map attached to his letter marked "B"; and

(c) That if the $2,000,000 of Pierce County is exhausted, after first deducting the expenses, before the full 70,000 acres are acquired, Pierce County shall nevertheless be deemed to have in all respects complied with the requirements of the authorization outlined in the letter of the Secretary of War dated December 2, 1916.

I herewith enclose letter addressed to Mr. J. T. S. Lyle for the signature of the Secretary of War.

JAMES J. MAYES,
Acting Judge Advocate General.

1 encl.

74 *United States Exhibit No. 5.*

JFD-JKR. JAG 601. AGO 601.1.

JULY 1, 1918.

Mr. J. T. S. LYLE,
Special Attorney, Tacoma, Washington.

SIR: I beg to acknowledge receipt of your letter of June 27, 1918, with respect to the condemnation proceedings instituted by Pierce County, Washington, for the acquisition of approximately 70,000 acres of land in the vicinity of American Lake, Washington, for donation to the United States as a site for a permanent mobilization, training, and supply station, in accordance with an understanding by the Secretary of War with certain citizens of Pierce County, represented by Mr. Stephen C. M. Appleby, that if Pierce County should tender to the United States a valid title to the said tract he would accept the same for the said purpose. You invite attention to the provisions of chapter 3, Laws of 1917 of the State of Washington, directing the acquisition of said tract by Pierce County and its donation for the said purposes to the United States, and state that Pierce County has instituted proceedings to condemn all of the said lands, two of which proceedings are already closed, so that the county has at this date secured title to 36,930 acres of the land required. In view of the fact that all of the title will be based on condemnation proceedings conducted on the same plan, you submit the title obtained by one of the said proceedings for examination, with a view to securing an expression of opinion by this department as to its sufficiency, in order that you may know whether the manner of obtaining the title is approved, and if not, so that any objections that may exist can be corrected while the subsequent condemnation proceedings are being conducted and while funds are available for the purpose. You invite attention in this connection to the act of July 2, 1917 (40 Stat. 241), as amended, by which the provisions of section 355 of the Revised Statutes, requiring that the title to all lands acquired by the United States must be approved by the Attorney General, are waived during the period of the existing war as to lands acquired, inter alia, for military training camps, and you suggest in view of the said waiver that the acceptance of
75 the title by the Secretary of War would appear to be all that is required to vest title to these lands in the Government.

In reply to your letter I have the honor to advise you that upon receipt of the papers in the proceedings submitted by you they were referred to the Judge Advocate General, who advises me as follows:

"It appears from an examination of the papers in the condemnation proceedings submitted, namely, the proceedings known as Pierce County ex rel. Thomas H. Bellingham, James R. O'Farrell, and James W. Slayden, county commissioners of Pierce County, petitioners, versus John August Abrahamson et al., respondents, that, in accordance with the terms of the said act of the Legislature authorizing Pierce County to acquire these lands by condemnation or other-

wise, a petition in condemnation was duly filed; that notice in the manner required was served upon each and every person and owner named therein, either personally or by publication, and that persons not named who might have any interest in the property were made parties by being notified by publication; and that judgment was rendered by the court determining that the said lands were necessary for a public use, and, finally, that judgments were entered awarding the amounts to be paid to the respective owners for their lands as just compensation therefor, and vesting title in Pierce County in fee simple to the said lands.

"The proceedings in the case submitted appear to be regular in every respect, and to be in conformity with the statute under the authority of which they were brought, and as the title of Pierce County is based upon the said proceedings and as Pierce County is directed by the statute to convey to the United States the lands so acquired, I am of the opinion that if the subsequent proceedings are conducted in the same manner, upon their conclusion and tender to the Secretary of War of a deed as authorized by the terms of the said act and its acceptance by him, provided the transaction be con-
76 cluded before the expiration of the war, a good title to the property for the purposes specified will vest in the Government. Moreover, the said act authorizing the acquisition by Pierce County of this property for donation to the Government under section 16 thereof contains the following mandatory provision:

"'If the title to the said land, real estate, premises, or other property attempted to be acquired is found to be defective from any cause, Pierce County shall again institute proceedings to acquire the same as in this act provided.'

"Under this provision if at any time the title conveyed to the Government by Pierce County as to the said tract or any part or portion thereof should be found to be defective, it is made obligatory upon the county to bring proceedings to cure the said title, and the Government as owner could compel such action, if necessary, in the courts of the State."

In accordance with this opinion, you are advised that the manner of conducting the proceedings in the above case which you have submitted is satisfactory to the War Department, and that if the subsequent proceedings are conducted in the same manner and are brought to a conclusion prior to the expiration of the existing war, and the deed to the entire tract is tendered by Pierce County in accordance with the understanding with the War Department, and as authorized and directed by the act of the legislature under which the proceedings are brought, I will accept the said deed on behalf of the United States.

Very respectfully,

SECRETARY OF WAR.

1 incl.

United States exhibit No. 6.

JFD–JKR. J. A. G. 601 (Misc. Div.), A. G. O. 601.1. 2nd ind.

WAR DEPARTMENT, J. A. G. O., *July 1, 1918.*

To the Adjutant General: 601. Condemnation—American Lake, Wash.

1. This is a letter from Mr. J. T. S. Lyle, special attorney and official representative of Pierce County in the condemnation
77 by the said county of a tract of land to comprise approximately 70,000 acres in the vicinity of American Lake, Washington, for the donation thereof to the United States as a site for a permanent mobilization, training, and supply station, in accordance with an understanding by the Secretary of War with certain citizens of Pierce County, Washington, as outlined in a letter to Mr. Stephen C. M. Appleby, of Tacoma, Washington, of December 2, 1916, that if Pierce County should tender to the United States a valid title to the said tract he would accept the same for the said purpose. Mr. Lyle calls attention to the provisions of chapter 3, Laws of 1917 of the State of Washington, directing the acquisition of the said tract by Pierce County and its donation for the said purposes to the United States and states that Pierce County has instituted condemnation proceedings to acquire all of the said lands, two of which proceedings are already closed, so that the county has at this date secured title to 36,930 acres of the lands required, and in view of the fact that all the title will be based on condemnation proceedings conducted on the same plan, he desires at this time to submit the title obtained by one of the said proceedings for examination with a view to securing an expression of opinion by this department as to its sufficiency, in order that he may know as to whether the manner of obtaining the title is approved, and if not, so that any objections that may exist can be corrected while the subsequent condemnation proceedings are being concluded and while funds are available for the purpose.

2. At the time the agreement with the citizens of Pierce County, outlined in the said letter of December 2, 1916, was made they were advised that before the title to the lands to be conveyed could vest in the United States it must be approved by the Attorney General, as required by section 355 of the Revised Statutes. Since that time, however, the act of July 2, 1917 (40 Stat. 241), as amended April 11, 1918 (Public No. 127, 65th Congress), has suspended during the existing war the operation of the said section as to lands donated to the United States, inter alia, for military training camps
78 by authorizing the Secretary of War to accept donations of lands needed for the said purpose and the other purposes named in the act. The Secretary of War is therefore authorized under the said act, as amended, to accept on behalf of the United States the donation of these lands, provided the title thereto be acquired and the tender of the same be made prior to the expiration of the war.

3. It apears from an examination of the papers in the condemnation proceedings submitted, namely, the proceedings known as Pierce County ex rel. Thomas H. Bellingham, James R. O'Farrell, and James W. Slayden, county commissioners of Pierce County, petitioners, versus John August Abrahamson et al., respondents, that in accordance with the terms of the said act of the legislature authorizing Pierce County to acquire these lands by condemnation or otherwise, a petition in condemnation was duly filed; that notice in the manner required was served upon each and every person and owner named therein, either personally or by publication, and that persons not named who might have any interest in the property were made parties by being notified by publication; and that judgment was rendered by the court determining that the said lands were necessary for a public use; and, finally, that judgments were entered awarding the amounts to be paid to the respective owners for their lands as just compensation therefor, and vesting title in Pierce County in fee simple to the said lands.

4. The proceedings in the case submitted appear to be regular in every respect, and to be in conformity with the statute under the authority of which they were brought, and as the title of Pierce County is based upon the said proceedings and as Pierce County is directed by the statute to convey to the United States the lands so acquired, I am of the opinion that if the subsequent proceedings are conducted in the same manner, upon their conclusion and tender to the Secretary of War of a deed as authorized by the terms of the said act and its acceptance by him, provided the transaction be concluded before the expiration of the war, a good title to the property for the purposes specified will vest in the Government.

Moreover, the said act authorizing the acquisition by Pierce
79 County of this property for donation to the Government under section 16 thereof, contains the following mandatory provision:

"If the title to the said land, real estate, premises, or other property attempted to be acquired is found to be defective from any cause, Pierce County shall again institute proceedings to acquire the same as in this act provided."

Under this provision if at any time the title conveyed to the Government by Pierce County as to the said tract or any part or portion thereof should be found to be defective, it is made obligatory upon the county to bring proceedings to cure the said title, and the Government as owner could compel such action, if necessary, in the courts of the State.

5. Mr. Lyle requests permission in his letter to withdraw the exemplified copies of the judgments and awards vesting title in fee simple in Pierce County, submitted for examination and consideration with his letter, in order that he can have them recorded in the office of the county auditor of Pierce County, whereupon he will return them to the files of this department. I see no objection to this being done and would recommend that they be transmitted to

him for that purpose, with the letter advising him of the approval of the department of the title to the land already acquired by Pierce County under the said proceedings.

6. Draft of reply to the said letter is inclosed herewith.

JAMES J. MAYES,
Acting Judge Advocate General.

2 incls.

United States Exhibit No. 7.

Reservations & titles. Smith, J. A.–JKR. JAG 601.1.

WAR DEPARTMENT,
OFFICE OF THE JUDGE ADVOCATE GENERAL,
Washington, September 6, 1919.

Memorandum for the Acting Judge Advocate General.

Subject: Propriety of accepting only a portion of the lands acquired by Pierce County, Washington, for donation to the United States for permanent military training camp at Camp Lewis, American Lake, Washington.

80 1. Information is desired as to the status of certain lands acquired by Pierce County, Washington, by condemnation proceedings, for donation to the United States, and the propriety of refusing to accept title to certain of said lands already acquired by Pierce County, it being alleged that the original owners are dissatisfied with the awards, and that said lands are no longer needed for military purposes.

2. At a hearing conducted in the office of the Secretary of War on or about December 2, 1916, there were present, among others, a committee of citizens of Pierce County; Major General Hugh L. Scott, Chief of Staff; and Major General J. Franklin Bell, commanding general, Western Department, at which conference the proposition tentatively advanced by Pierce County to donate a tract of land to the United States as a site for a permanent mobilization, training, and supply station at or near American Lake, in Pierce County, Washington, was discussed. The result of the understanding reached at said conference was reduced to writing in the form of a letter from the Secretary of War, dated December 2, 1916, addressed to Mr. Stephen C. M. Appleby, chairman of the Pierce County committee, wherein the lands proposed to be donated were particularly identified by certain maps whereon the area was fixed at about 108.2 square miles, or approximately 70,000 acres. In said letter the Secretary of War stated as follows:

"I am advised at the hearing that the site in question has been carefully considered by the commanding general, Western Department, with the advice of other military authorities, and that it is deemed a suitable site for a permanent mobilization and supply station for the Puget Sound area, and suitable for the accommodation of a division of mobile troops. You are further advised that if

Pierce County tenders a deed conveying a valid title to lands included in the exterior limits above described and subject to the substitutions above described having an acreage of approximately 70,000 acres, I will accept the same for the purpose of maintaining thereon
81 a permanent mobilization, training, and supply station, under the authority of the act of Congress approved August 29, 1916 (Public No. 242, 64th Congress), subject to the condition to be embodied in the conveyance in accordance with the proposition that if the United States should ever cease to maintain said tract as a site for a permanent mobilization, training, and supply station, title to the lands so donated to the United States will revert to the County of Pierce, State of Washington."

3. On January 6, 1917, without awaiting the action of the legislature, a special election was held in Pierce County, wherein the voters of such county by more than three-fifths majority of those voting, attempted to authorize the incurrence of an indebtedness of over $2,000,000 with which to acquire approximately 70,000 acres of land in said county, and attempted to authorize such county to convey the same to the United States for a permanent mobilization, training and supply station. Subsequently, the State legislature granted the necessary authority. (Chapter 3, Laws of 1917, approved on January 27, 1917, State of Washington.) The said act in the preamble recites, interalia, that—

"Whereas the Secretary of War, with the approval of the President of the United States, deeming it expedient has agreed on behalf of the Federal Government to establish in Pierce County, Washington, a permanent mobilization, training, and supply station for any and all such military purposes as are now and may be hereafter authorized or provided by or under Federal law, on condition that land in Pierce County aggregating approximately 70,000 acres at such location or locations as have been or may be hereafter from time to time selected or approved by the Secretary of War, be conveyed to the United States with the consent of the State of Washington, free of cost to the United States." * * *

Following the recitals, section 2 provides in part—

"That there is hereby imposed upon the county of Pierce in the State of Washington, an indebtedness not exceeding, exclusive
82 of interest, $2,000,000, and the county commissioners of such county, acting as an arm and agency of the State, are hereby directed to incur an indebtedness not exceeding, exclusive of interest, two million dollars, with which such county as an arm and agency of the State in hereby required to acquire, by condemnation or otherwise land in Pierce County, Washington, aggregating approximately seventy thousand acres, at such location or locations as may have been or may be hereafter from time to time selected or approved by the Secretary of War (of the making of which selection the determination of the county commissioners of such county shall be conclusive), and convey all of such lands to the United States to be used by the United States for any or all such military purposes, including supply

stations, the mobilization, disciplining, and training of the United States Army, State militia, or other military organizations, as are now or may be hereafter authorized or approved by or under Federal law. * * *"

By said act the right of eminent domain was extended to Pierce County as the arm and agency of the State for the purpose of acquiring said lands, and it was further provided—

"That the determination of the commissioners of such county that the Secretary of War has selected the lands described in the petition or petitions shall be conclusive that public necessity requires their condemnation and appropriation for such military site."

The law also prescribed the manner of service and provided for the right of trial by jury and due opportunity for all persons to be heard, with right of appeal in the event the person whose property was being taken was not satisfied with the award. By the same act the consent of the legislature of the State of Washington was given to the acquisition of said lands by the United States by donation from Pierce County, and subject to service of civil and criminal process the consent of the State of Washington was given

to the exercise by the Congress of the United States of
83 exclusive legislation in all cases whatsoever in all tracts or parcels of land so conveyed to it.

4. Mr. J. T. S. Lyle was appointed special attorney and official representative of Pierce County to proceed with the acquisition of title to the said lands to be donated to the United States, and he instituted condemnation proceedings with that end in view. Title to all of the lands were acquired by three proceedings, known as the Abrahamson case, the Nisqually Indians' case, and the Asberg case, respectively. Upon completion of the proceedings in the Abrahamson case, involving approximately 33,463.78 acres, all the papers were submitted to the Secretary of War for approval, and upon advice of the Judge Advocate General the Secretary of War advised the official representative of Pierce County, on July 1, 1918, as follows:

"You are advised that the manner of conducting the proceedings in the above case which you have submitted is satisfactory to the War Department, and that if the subsequent proceedings are conducted in the same manner and are brought to a conclusion prior to the expiration of the present war, and a deed to the entire tract is tendered by Pierce County in accordance with the understanding by the War Department and as authorized and directed by act of the legislature under which the proceedings are brought, I will accept the said deed on behalf of the United States."

In the meantime the location of the training camp was changed for military reasons at the request of official representatives of the Secretary of War and more expensive lands than those originally contemplated selected for acquisition by the War Department. As a result of these changes in the selection of lands, the Secretary of War, under date of July 15, 1918, consented to a modification of the original proposition as set out in letter of December 2, 1916, so as

to conform to the modifications made necessary by the changed conditions, and approved the selection and acquisition of lands already acquired by condemnation proceedings to the amount of 36,930
84 acres, also the selection of the balance of the said lands and plan of obtaining title thereto, with the understanding that if the $2,000,000 acquired under the bond issue became exhausted before the full 70,000 acres were acquired, Pierce County would nevertheless be deemed in all respects to have complied with the requirements of the original proposition.

5. Thereafter the official representative of Pierce County proceeded with the condemnation and acquisition of the balance of the lands desired and needed by the United States for military purposes, as selected and approved by the Secretary of War. Because of the fact that the $2,000,000 available had become exhausted, the matter was again taken up with the Secretary of War for further modification of the original agreement, and under date of July 8, 1919, the Secretary consented that certain standing timber on portions of the lands which had been acquired by Pierce County to be deeded to the United States might be sold to the amount of about $20,000, to cover the remainder of the judgments on awards, payments for which had not been made, with the understanding that such lands would be deeded to the United States subject to the right of the purchaser of the timber to remove such timber within five years from August 1, 1919. This agreement also provided that Pierce County might have the right to eliminate certain tracts theretofore mentioned as could not be paid for, and formal approval was given to the plan of permitting the Board of County Commissioners of Pierce County to sell the improvements on the said lands, using the funds at their disposal for acquiring necessary lands and paying expenses; and formal approval was given of the plan of permitting certain owners to keep without pay such timber on certain tracts as they shall cut and remove within two years from October 1, 1918. Approval was also given to the dismissal of condemnation suits as to all lands outside of certain boundaries and such as Pierce County might be finally unable to pay for.

6. Following the supplemental agreement above mentioned, the representative of Pierce County submitted to the Secretary of War evidences of title in Pierce County to the remainder of said lands, aggregating, together with those already acquired, approxi-
85 mately 62,423 acres. These were referred to the Judge Advocate General for examination and approval, and under date of July 22, 1919, upon the advice of the Judge Advocate General, the representative of Pierce County was advised by the Secretary of War that, subject to the conditions set forth in the opinion of the Judge Advocate General quoted in said letter, when the deed submitted for approval should be completed in the form and manner indicated, he would accept such deed on behalf of the United States. The opinion of the Judge Advocate General in the matter indicated that the method of acquiring title was satisfactory and showed no

defects in said proceedings or in the title of Pierce County in so far as said proceedings had been completed, but set forth certain additional requirements to be met before the deed to said lands and all of said lands should be accepted by the Secretary of War on behalf of the United States.

7. In view of the situation as it exists with reference to the acquisition of the title to these lands by Pierce County, Washington, it would appear that no authority exisited in Pierce County to acquire title to said lands by eminent domain proceedings except by reason of the fact that the lands had been selected and approved by the Secretary of War for military purposes, and the judgments of public use and necessity were based upon such selection. It would also appear from the language of the act authorizing the acquisition of these lands that no authority existed in Pierce County to hold said lands acquired by such condemnation proceedings except for conveyance to the United States or as trustee for the United States for the purposes therein indicated. The action of the official representative of Pierce County at all times was governed by the wishes of the officials of the War Department as to the lands to be acquired by such condemnation proceedings, and from time to time his plan of proceeding was submitted to the War Department for approval. In each case he was advised that the land selected met with the approval of the War Department and the manner of conducting said proceedings was likewise approved.

8. During all of the period the official representative of
86 Pierce County was engaged in conducting the condemnation proceedings above referred to he was more or less hampered by the activities of land agents and attorneys in that locality who combined for the purpose of securing exhorbitant awards for the taking of said land, which necessitated on his part the building up of an efficient organization consisting of real estate men, soil experts, timber experts, contractors, and others familiar with local conditions, to be used by him as witnesses in these cases. The attorneys representing the owners of the lands were equally organized and both sides presented testimony on values, and every opportunity was afforded the owners to be heard, and awards in all cases were rendered by jury or by consent, and even then only after submitting testimony, and the right of appeal was afforded to those dissatisfied with the awards. From time to time protests were filed in the War Department by owners, their attorneys, or representatives in Congress, objecting to said awards or manner of proceeding and urging the department to interfere or intervene in their behalf, but the department has consistently taken the stand and held to the view that it was entirely a matter in the hands of the local authorities, pending in the State courts, wherein the owners had every reason to be assured of fair treatment in the determination of the value of their properties, and were entitled

to the same right of appeal from the findings of the court as they would have had in case the proceedings had been instituted by the Federal Government, and that it was not a matter in which the Federal Government could properly interfere.

9. In view of the fact that the vote of the citizens of Pierce County was taken on the bond issue for the raising of money to acquire land solely for the purpose of its being conveyed to the United States, and that condemnation proceedings were instituted and the particular lands were condemned solely because they had been selected by the War Department for military purposes and the act of the legislature directed the county as an arm and agency of the State to convey all of the said lands thus acquired to the Federal Government, and no authority of law exists for the county of Pierce to retain said lands thus acquired, it is very
87 doubtful whether the Secretary of War could in good faith, or at least with propriety, refuse to accept a portion of said lands solely upon the representations of dissatisfied owners that the land was no longer needed for military purposes. It would seem from what has been said that the determination of whether or not the lands condemned were needed for military purposes is at the present time a closed incident, as the condemnation proceedings were based on such determination and the money expended therefor raised by a bond issue authorized the acquisition only of lands from time to time selected or approved by the Secretary of War, as needed for military purposes. It is not believed that this question can properly be reopened at this time except for cogent legal reasons. Pierce County acquired title to these lands under the authority of the act of the State legislature which directed that they be acquired by the said county and conveyed by it to the United States, and in doing so Pierce County acquired title to these lands solely for that purpose. The Secretary of War, acting under the authority of an act of Congress authorizing the acceptance of donations of lands, did by his agreement of December 2, 1916, as supplemented by agreements of July 15, 1918, and July 8, 1919, agree to accept said lands on behalf of the United States. Equity considers that as done which is lawfully directed to be done or agreed to be done, and when Pierce County acquired title to these lands it held title to same as trustee for the United States, and for no other purpose.

The title of the owners of said land was divested out of them by said condemnation proceedings and the fee vested in Pierce County. The equitable title until formal conveyance to the United States vested in the United States, and Pierce County could not, or can not, convey good title to said lands to the former owners or to anyone except the United States. Congress having the sole power to dispose of lands and property of the United States, in my opinion the Secretary of War can not waive any rights of the United States, or, except by authority of Congress, enter into any agreement that would amount to divesting the United States of equitable title

88 in said lands. In view of these conditions and the circumstances surrounding the transaction, and the fact that Pierce County has already acquired title to all of these lands, it is my judgment that the Secretary of War can not by agreement deprive the United States of the title in and to any of said lands except by consent of Congress.

JOHN A. SMITH,
Major, Judge Advocate.
J. F. D.

United States Exhibit No. 8.

A. G. 313.54. Camp Lewis, Wash. (12-7-22.)

UNITED STATES OF AMERICA,
WAR DEPARTMENT,
Washington, December 9, 1922.

I hereby certify that the attached copy of letter from J. T. S. Lyle, dated June 21, 1918, with copies of maps marked "A" and "B" referred to therein; the attached copies of letters from J. T. S. Lyle, dated March 11 and March 17, 1919, respectively, and the attached copy of memorandum signed by E. A. Hickman, showing the delivery of papers to J. T. S. Lyle, are true photostat copies, made from official records on file in the Adjutant General's Office.

ROBERT C. DAVIS,
Major General, U. S. Army,
The Adjutant General.

I hereby certify that Major General Robert C. Davis, U. S. Army, who signed the foregoing certificate, is The Adjutant General of the Army, and that to his certification as such full faith and credit are and ought to be given.

In testimony whereof I, John W. Weeks, Secretary of War, have hereunto caused the seal of the War Department to be affixed and my name to be subscribed by the assistant and chief clerk of the said department, at the city of Washington, this 9th day of December, 1922.

[SEAL.]

JOHN W. WEEKS,
Secretary of War.
By JOHN C. SCHOFIELD,
Assistant and Chief Clerk.

89 LAW OFFICES OF LYLE & HENDERSON,
TACOMA BUILDING, TACOMA, WASHINGTON,
Washington, D. C., June 21, 1918.

American Lake, Washington permanent mobilization, training and supply station for the Puget Sound area.

Hon. NEWTON D. BAKER,
Secretary of War, Washington, D. C.

DEAR SIR: The purpose of this letter is to submit for your consideration certain matters which have arisen since December 2, 1916, in connection with the acquiring the land for the permanent mobiliza-

tion, training, and supply station for the Puget Sound area, in the vicinity of American Lake, Washington.

The agreement which is the basis for acquiring the land above referred to is set forth in a letter signed by you as Secretary of War on December 2, 1916, a copy of which letter is hereto attached. That part of the letter which is pertinent to this inquiry is as follows:

"The essentials of the propositon are understood by me, in the light of the conference, to include the acquisition by Pierce County by purchase or condemnation, for public purposes of the United States specified in title 171, section 21, Pierce's Washington Code, annotated, 1912, of a tract of land designated in yellow on the map accompanying the proposition bearing the legend:

"'Site for division cantonment and mobilization and training camp for Puget Sound area, prepared from county maps, Pierce County, Wash., in office of department engineer, Western Department. Explanatory notes by Capt. R. Park, C. E., accompanying.'

"The aggregate area of the tract embraced by the exterior limits of land proposed to be donated is 140 square miles. Within this area are certain holdings, having an aggregate area of 31.8 miles, indicated in 'pink' and orange, which it is not proposed to donate. The area indicated in yellow included in the proposition has a
90 net area of 108.2 square miles, or approximately 70,000 acres.

The committee reserves the right to omit a portion of the area designated in yellow lying in the northerly part of the same, and to substitute an equivalent area lying to the east of the tract above described, this substitution to be subject to the recommendation of the commanding general of the Western Department and the approval of the Secretary of War.

"I am advised at the hearing that the site in question has been carefully considered by the commanding general, Western Department, with the advice of other military authorities, and that it is deemed a suitable site for a permanent mobilization, training, and supply station for the Puget Sound area, and suitable and sufficient for the accommodation of a division of mobile troops.

"You are further advised that if Pierce County tenders a deed conveying a valid title to lands included in the exterior limits above described and subject to the substitutions above described, having an aggregate area of approximately 70,000 acres, I will accept the same for the purpose of maintaining thereon a permanent mobilization, training, and supply station, under the authority of the act of Congress approved Aug. 29, 1916 (Public No. 242, 65th Congress), subject to the conditons to be embodied in the conveyance in accordance with the proposition that if the United States should ever cease to maintain said tract as a site for a permanent mobilization, training, and supply station, title to the lands so donated to the United States will revert to the County of Pierce, State of Washington."

The grouping of the tracts as set forth on the map referred to was essentially for the purpose of securing the largest area possible for the maneuvering of troops in times of peace. Accordingly, certain valuable farms and suburban tracts were colored in pink as indicative of land too expensive for the purpose, and therefore to be omitted.

After a careful investigation of the value of the lands marked in yellow on the map it was determined that two millions
91 would be sufficient for acquiring the land and the expenses incident thereto.

Accordingly, a proposition to bond Pierce County for the sum of $2,000,000 was submitted to the electors on January 6, 1917, who gave their assent by an unusually large majority.

There being some question about the sufficiency of the State laws to empower the county to contract the debt and condemn land for the purpose in question, an entire new act was presented to the legislature at its 1917 session and passed with but one dissenting vote.

At the time the act was drawn, war with the Imperial German Government seemed inevitable, so the act was broadened so as to leave no doubt as to the military purposes for which the land was to be acquired.

For this reason, sec. 2 of the act provides—

"That there is hereby imposed upon the county of Pierce, in the State of Washington, an indebtedness not exceeding, exclusive of interest, two million dollars, and the county commissioners of such county, acting as an arm and agency of the State, are hereby directed to incur an indebtedness not exceeding, exclusive of interest, two million dollars, with which such county as an arm and agency of the State, is hereby required to acquire, by condemnation or otherwise, land in Pierce County, Washington, aggregating approximately seventy thousand acres, at such location or locations as may have been or may be hereafter from time to time selected or approved by the Secretary of War (of the due making of which selection the determination of the county commissioners of such county shall be conclusive) and convey all of such lands to the United States, to be used by the United States for any or all such military purposes, including supplying stations, the mobilization, disciplining, and training of the United States Army, State militia, and other military organizations, as are now or may be hereafter authorized or provided by or under Federal law. * * *" [Sec. 2, chapter 3, Laws 1917.]

2 It will be noted that the county is required to acquire any land in the county which the Secretary of War shall select for the purposes named and that no reference is made to the map referred to in the letter of December 2, 1916.

The wisdom of the change became apparent when Camp Lewis was located on part of the tract for the mobilization and training

of units of the National Army. After the examination of the ground for the new purpose it was determined that land marked in red as not being necessary under the original plan was indispensable under the new conditions. In fact, an entire revision of the original selections was required. In order that we might proceed in a regular way, I made request that an official representative of the Secretary of War be designated to select the land for the United States. Colonel A. R. Ehrnbeck, Engineer Corps, then a captain, was the first official representative. He was followed by Colonel David L. Stone, then captain, the constructing quartermaster of Camp Lewis. Upon his departure, Col. Ehrnbeck, who had returned to Camp Lewis as Lt. Col., 316 Engineers, N. A., was again selected and upon the transfer of Col. Ehrnbeck to Camp Dix, Captain Howard M. Smitten, Q. M. C., Camp Lewis, was designated and he is now acting in that capacity.

The site for the building first selected by the Western Department was what is locally known as "Six Mile Prairie," adjacent to the west shore of American Lake. I immediately secured quitclaim deeds from the owners, leaving the compensation to be fixed in the condemnation suits which were to follow. This selection included the valuable lake front on American Lake, which was colored in pink on the original map.

Shortly afterwards the site for the buildings was changed to a tract about two miles south of American Lake and request made for that land. This request was also complied with at once.

Later on certain suburban areas near the camp site were leased by the owners for "joy zones" and requests were made that the nuisance be abated by condemning these tracts, which were also colored in pink on the map. From time to time further requests for lands that had been colored in pink on the map were made,
93 the last being for that part of the Nisqually Indian Reservation which was in Pierce County.

In acquiring the land I felt that quick service to the War Department was imperative so that I kept in daily touch with the official representative in order that each request could be complied with at once.

Now that the land needed has been secured, I can go on record as stating that at no one time was the War Department hampered in getting the land as required. I make this digression for the purpose of calling attention to the spirit in which the project has been carried through.

The lands secured in the first and second condemnation proceedings were all carefully selected and checked by the official representatives.

At this time Pierce County has secured title to 36,930 acres, which it holds in trust for the United States to be conveyed at the proper time.

We start the trials to secure the remainder of the lands on August 5th next.

The prices paid for the lands already secured have all been on the basis fixed by the juries. The task has not been small because the land is nearly all in use and the largest part is divided into small tracts. Altogether there were 623 separate farms or tracts in the area already secured. This meant 623 separate awards. The trials lasted five and a half months. The property owners organized in syndicates to secure big awards with the result that we were compelled to fight resourceful organizations in order to protect the fund from the attempted raids. This statement will probably explain the purpose of the propaganda in behalf of the landowners, which has reached the War Department from time to time. It is sufficient to say, concerning this phase of the matter, that in the first proceeding, involving 33,362.50 acres, the values contended for by the landowners exceeded our appraisement by approximately a million and a quarter dollars, but the juries only raised our appraisement $15,075.12, which was pleasing as sustaining the accuracy of our appraisement.

94 In spite of the manner in which the funds were conserved the necessity of securing the additional land not contemplated in the original proposition has so added to the cost of the whole project that it is now doubtful whether the fund will be sufficient to secure approximately 70,000 acres as set forth in the letter of December 2, 1916.

Altogether the land already acquired as above set forth which was colored in red has cost us $297,436, the largest part of the expenditure being for the suburban land on American Lake. Had the original plan been adhered to there is no doubt but that our fund would have been sufficient.

In the foregoing statement I have endeavored to give a brief history of the manner in which changed conditions have brought about a modification of the agreement set forth in the letter of December 2, 1916. The changes have all been made at the request of the official representatives of the War Department with full knowledge of the limitations of our fund. In fact, they have always taken the position that the Government was the real party in interest and that it was their duty to get the land which was most advantageous for both peace and war purposes, and in arriving at their conclusions in this respect they have consulted with the commanding general and staff of the 91st Division at Camp Lewis.

From the estimates which I have made it appears that about $600,000 will remain to pay for the balance of the land needed to make up an aggregate of approximately 70,000 acres.

Judging by the awards in the cases already tried we may be able to get the required amount.

In order to get the most desirable land first, Captain Smitten has prepared a map dividing the land into what might be termed zones, which we expect to condemn in the order designated by him until the required amount is secured or until the fund is exhausted after first deducting the necessary expenses. The above estimate of $600,000 available is not, however.

We are all ready to proceed on this plan when the cases are called on August 5th next. However, the records of the department show the agreement set forth in the letter of December 2, 1916, with no definite statements of the modifications which have been made by actual performance since that time.

Therefore, in order to clear up the record so that it will show that Pierce County has fully met all requirements of the situation in every way in order to best serve the Government and in order that a permanent record may be made while the details are fresh in the minds of those concerned in the matter, I respectfully request your official approval of the modifications of the agreement of December 2, 1916, as already made, and the plan of acquiring the remainder of the land as above set forth be approved and that if the fund is exhausted, after first deducting the necessary expenses, before the entire amount originally contemplated is secured, that Pierce County will be deemed to have complied with the original agreement of December 2, 1916.

Attached hereto are two maps, as follows: (A) Showing the land already acquired with notations of any areas for which easements for maneuver purposes only have been secured; (B) the remainder of the lands which we hope to acquire under the zone system above outlined. As a matter of information the maps will show that the land as selected is suitable for an artillery range of about fifteen miles, which would be an extension of the range shown in use.

The site first selected by General J. F. Bell, then commanding the Western Department, as most desirable for the location of the division of the Regular Army under the original agreement of December 2, 1916, referred as above as on "Six Mile Prairie," is still available for another camp site in case of future expansion for a whole division. The water system and the sewerage system for Camp Lewis were so constructed as to take care of a camp on this location should an occasion arise when an additional camp would be necessary.

Respectfully submitted.

J. T. S. LYLE,
Special Attorney and Official Representative of Pierce County, Wash.

96

DECEMBER 2, 1916.

"MR. STEPHEN C. M. APPLEBY,
"*Chairman Pierce County Committee, Tacoma, Washington.*

"SIR: At the hearing conducted in my office at which were present Stephen C. M. Appleby, Frank S. Baker, Jesse O. Thomas, and Elbert H. Baker of Cleveland, O., committee of citizens of Pierce County, Washington, and at which also appeared Maj. Gen. Hugh L. Scott, Chief of Staff; Maj. Gen. J. Franklin Bell, United States Army, commanding general, Western Department; and Capt. John B. Murphy, Coast Artillery Corps, his aide de camp, there was discussed informally the proposition tentatively advanced to donate a

tract of land to the United States of a site for a permanent mobilization, training, and supply station at or near American Lake in Pierce County, Washington.

"The essentials of the proposition are understood by me, in the light of the conference, to include the acquisition by Pierce County, by purchase or condemnation, for public purposes of the United States specified in title 171, section 21, Pierce's Washington Code, annotated, 1912, of a tract of land designated in yellow on the map accompanying the proposition bearing the legend:

"'Site for division cantonment and mobilization and training camp for Puget Sound area, prepared from county maps, Pierce County, Wash., in office of department engineer, Western Department, Explanatory notes by Capt. R. Park, C. E., accompanying.'

"The aggregate area of the tract embraced by the exterior limits of land proposed to be donated is 140 square miles. Within this area are certain holdings, having an aggregate area of 31.8 miles, indicated in 'pink' and orange, which it is not proposed to donate. The area indicated in yellow included in the proposition has a net area of 108.2 square miles, or approximately 70,000 acres. The committee reserves the right to omit a portion of the area designated in yellow lying in the northerly part of the same, and to substitute an equivalent area lying to the east of the tract above described, this substitution to be subject to the recommendation of the commanding general of the Western Department and the approval of the Secretary of War.

"I am advised at the hearing that the site in question has been carefully considered by the commanding general, Western Department, with the advice of other military authorities, and that it is deemed a suitable site for a permanent mobilization, training, and supply station for the Puget Sound area, and suitable and sufficient for the accommodation of a division of mobile troops.

"You are further advised that if Pierce County tenders a deed conveying a valid title to lands included in the exterior limits above described, and subject to the substitutions above described, having an aggregate area of approximately 70,000 acres, I will accept the same for the purpose of maintaining thereon a permanent mobilization, training, and supply station, under the authority of the act of Congress approved Aug. 29, 1916 (Public No. 242, 64th Congress), subject to the conditions to be embodied in the conveyance in accordance with the proposition that if the United States should ever cease to maintain said tract as a site for a permanent mobilization, training, and supply station, title to the lands so donated to the United States will revert to the county of Pierce, State of Washington. It is understood that the title so conveyed to the United States must be approved by the Attorney General of the United States, as required by section 355, Revised Statutes of the United States.

"You are further advised that as soon as and as long as the appropriations made by Congress and the military demands upon

the mobile forces of the United States permit, I will establish and maintain upon said reservation a division of mobile troops with such improvements as are provided for in said appropriations.

"NEWTON D. BAKER,
"*Secretary of War.*"

[Memo.—Attached here in the original exhibit are two large photostatic copies of maps showing area occupied by Camp Lewis.]

98

MARCH 11, 1919.

From: J. T. S. Lyle, special attorney for Pierce County.
To: Secretary of War, Washington, D. C.
Subject: Acquiring of lands by Pierce County for military purposes of the United States at American Lake, Washington.
Attention: Operations Division, General Staff.

DEAR SIR: The matters herein set forth came before you primarily on exchange of telegrams as follows:

OCTOBER 5, 1918.

"In connection with the acquiring of land by Pierce County at American Lake, Washington, I direct your attention to the topographical map accompanying my letter to you under date of August twenty seventh nineteen eighteen period On this map on a line between Spanaway Lake and the town of Roy you will note some lowlands in sections thirteen seven eight five six thirty one thirty two period. These lowlands were formerly covered with water and have been drained by the owners and placed in a high state of cultivation period The farm lands are adjacent to the lowlands period The lands are approximately nineteen hundred acres in extent and our appraisement is approximately eighty seven thousand five hundred dollars period These lowlands are parts of farms the owners of which have offered to let us take the balance of their farms without any claim of damages to the part not taken if we will leave the lowlands period This would be substantially in accordance with the original plan where certain lands were marked in red on the original map as not to be taken period In my opinion the cost of these lands with the buildings thereon is out of proportion to their military value because unless the ditches are kept open the land will return to its former flooded state so that there will be nothing but an impassable swamp period For the cost of these lowlands we can get approximately five thousand additional acres southeast of these lands which will be more valuable for

99 maneuver purposes period Since under the present plan we are trying to get as much land as our money will buy I recommend this proposition. J. T. S. LYLE."

In answer to the above the following telegram was received:

"OCTOBER 9, 1918.

"Reference telegram Oct seventh connection acquiring of land by Pierce County at American Lake. Before taking action thereon

the Secretary of War desires that commanding officer Camp Lewis be given opportunity to submit recommendations in this matter. Please confer with him on this subject and submit colored map similar to map furnished with original proposition showing exactly the land you recommend be excluded and additional land you propose to have included. This matter will receive prompt attention on receipt of map with commanding officer's recommendations accompanying it. HARRIS."

On the day of the receipt of the above answer I made an appointment with Major General J. D. Leitch, commanding officer, Camp Lewis, and found that he had received advices on the subject from Washington. Accordingly, the next day, Generals Leitch, Watson, Captain Henry Harmeling, Judge Advocate's Department, Camp Lewis, who had previously been designated as representative of the Secretary of War on the subject of acquisition of lands at American Lake, and the writer made a personal inspection of the various tracts of land in question and of other lands which fell in the same class.

On October 22nd I received the following telegram:

"Secretary of War accepts general idea outlined your telegram October seventh nineteen eighteen approved by Commanding General Camp Lewis in telegram October sixteenth nineteen eighteen in which you recommended certain lowlands in Sections thirteen seven eight five six thirty one thirty two on line Spanaway Lake and town of Roy approximately nineteen hundred acres be excluded in appraisement and approximately five thousand additional acres southeast of these lands be secured and substituted therefor under terms agreements heretofore consummated by representative Pierce County and Secretary of War specific approval. This proposition must await receipt detailed report from you approved by commanding general Camp Lewis with map showing exactly what lands are excluded and what are to be included. This agreement should fit in and be part of agreements heretofore entered into by Secretary of War and representatives Pierce County under dates December second nineteen sixteen and July fifteen nineteen eighteen. HARRIS."

In proceeding to comply with the suggestions contained in the last telegram above set forth, we found ourselves confronted with a very perplexing problem. We were in the midst of our condemnation cases and rapidly approaching the land in question. To get the exact boundaries worked out required surveys and many personal conferences with the owners. The amount of money available was fixed and to rush proceedings would mean that we would have to pay more for the lands taken from the various farms, part of which were to be eliminated, than would have to be paid if we proceeded in a careful, deliberate manner. To have worked the boundaries all out at one time would have required that we take

an adjournment in the condemnation case until the task could be completed. We were meeting with success in our verdicts and it was too great a hazard to risk a postponement until a later day. Delay might mean that we would have to pay more for the land which we did take in the condemnation proceedings. Accordingly, after careful consideration of the whole question and conferences with General Leitch and Captain Harmeling, we decided to proceed with the condemnation case and work out each piece as we came to it. This plan worked out admirably and we secured every tract, with the exception of one small piece, without any contest from the owners and without any claims for damages to the remainder by reason of taking parts of farms.

As the case progressed and the boundaries of each tract were worked out, I submitted the same to General Leitch and
101 secured his approval before the same was taken. I realized that by this method I imposed upon the kindness and willingness of General Leitch, but the results in the amount of additional land secured and the character of the eliminations demonstrates that this plan was well worth the time and labor required.

I herewith submit a lithographed copy of a contour map of Camp Lewis and the American Lake maneuver area made by the 316th Engineers, based upon a complete survey of the whole area made by the regiment. The purpose of this map is to conform with the requirements of the telegram of October 2nd above referred to. The legend on the map explains the meaning of the colors.

It will be noted that the eliminations made conform to the original plan of eliminations. It will also be noted that eliminations were also made in sections 23, 24, 27, in township 18 north, range 2 east, also in sections 19, 20, 26, 27, 28, 33, 34, and 35, township 18 north, range 3 east.

The eliminations in sections 23, 24, 27, west of the railroad track, fall within the class, with the additional fact that on these lands are situated small lakes from which the owners receive a substantial annual rental for fishing purposes from the sporting clubs of Tacoma. The eliminations in section 24, township 18 north, range 2 east, east of the railroad track, and sections 19, 20, 26, 27, and 28, 34, and 35, township 18 north, range 3 east, fall in a different class. These lands are creek bottom lands of greater agricultural value than any lands which we have taken, and you will note that these lands were designated to be eliminated in the original propositions.

The eliminations above referred to were made after we had proceeded with the condemnation case beyond the land mentioned in my first telegram and when we found that our money was reaching far enough to take in additonal maneuver area not contemplated when my first telegram was sent.

The progress of the suit was southward and eastward, where natural boundaries were reached in both cases, the boundary on the east being a concrete paved highway extending south-
102 ward from the city of Tacoma to the Ranier National Park.

The boundary on the south is a heavily timbered area covered with merchantable timber.

We next call your attention to the land situated in the north half of sections 21, 23, in township 19 north, range 2 east, shown east of the main highway from Tacoma to Camp Lewis. All of this land, colored in red, has been designated in all previous negotiations had with the department as tracts to be eliminated. The whole area colored in red was platted some ten years ago in five-acre tracts and upon sixty tracts of which small homes had been built. The part east of the purple line contains only two homes, so did not cost much money. The western part of the area being situated on the main highway to Camp Lewis presented a problem that needed attention. When the National Guard troops of Washington and the 18th Engineers were mobilized on the State Military Reservation in the spring of 1917, a so-called "joy zone" immediately sprung up on the area designated in red just southwest of the area under discussion and the nuisance was abated by our condemning the land. Likewise, when the troops arrived at Camp Lewis in the fall of 1917, a similar "joy zone" came into being in the area designated in red adjacent to Camp Lewis, and for the protection of the camp this nuisance was also abated by our condemnation suit. There never has been any trouble with reference to the area under discussion for the reason that we have had this area in our condemnation suit and the prompt action which was taken as to the other two "joy zones" discouraged any similar attempts as to this area. However, the number of inquiries was made by individuals who wished to start similar "joy zones" if this particular area was eliminated made it necessary that at least a part along the highway should be taken.

Unfortunately, we didn't have sufficient money to take the balance. The number of acres inside the purple lines is 350 and our appraised value is $56,675.00.

It will be noted that wherever the nature of the ground would permit, crossing strips of not less than 400 feet in width have
103 been taken excepting where the eliminated tracts were already crossed by public highways, as, for instance, along the north line of section 32, township 19 north, range 3 east, through section 19, township 18 north, range 3 east, between sections 27 and 28, township 18 north, range 3 east.

At present one of the main highways connecting Tacoma with the territory of the south follows the Northern Pacific Railway Company's right of way through the center of the maneuver area to Roy. In order that this highway might be abandoned and in order to permit means of egress and ingress to the owners of the eliminated tracts, a new highway was established along the right of way of the Chicago, Milwaukee and St. Paul Railway Company on the eastern part of the tract leading on to the paved road at the east end of the tract. The establishment of this road permits the abandonment of all the highways to the westward throughout the whole tract, with the exception of the Pacific Highway, which

leads from Tacoma southward to Camp Lewis and thence on to Portland, Oregon.

While in Washington last September, I drew on the map which was a copy of the map in red and yellow referred to in the letter of the Secretary of War of December 2nd, 1916, a line which showed the land which I estimated could be obtained without any eliminations with the funds which we had at our disposal. This map was supplied after my letter of August 27th, 1918, and should be found with the files referred to in the letter of the Secretary of War, to me, dated September 12th, 1918. My estimate, based on our appraisals, was that the amount which we could secure, under the plan as it then existed, 50,000 acres. The area of the land taken as a result of the modification of the plan hereinbefore set forth is 62,432.122 acres. The reservation secured is, in our judgment, more desirable than the one which would have been secured had the original plan of December 2nd, 1916, been followed. The lands which have been secured, which were designated in red as eliminated lands in the original proposition, add greatly to the value of the reservation, while the lands marked in yellow,
104 which are not taken, would not add much to the military value of the reservation. In working out the above plan and proceeding with the condemnation case, until we had acquired an area [illegible]bove indicated, we had to do much planning in order that we [illegible]at have a compact whole when our money gave out.

Our condemnation case is in effect closed, but we have excused the jury with instructions to report at a later date in order that a report may be made to the department and advices received before the jury is dismissed and the case finally concluded.

The lands which have been acquired were taken by condemnation judgments which were filed from time to time as the compensation for the different tracts was fixed. In fixing the compensations we had to pay for such buildings and other improvements as were situated upon the different tracts. There soon was an accumulation of buildings and improvements which had no military value and which were, in fact, in the way for military use. The question as to what should be done with the improvements arose almost immediately as part of the grounds was desired for buildings at Camp Lewis. Several conferences were had on the subject with Lt. Col. David L. Stone, construction quartermaster at Camp Lewis, and who had been previously designated by The Adjutant General as the representative of the Secretary of War in matters relative to the acquiring of the land. It was finally agreed that the improvements having no military value were to be sold by the Board of County Commissioners of Pierce County and the proceeds from the sales were to be added to the proceeds of the $2,000,000.00 bond issue of Pierce County and used for acquiring of more land and expenses incident thereto. This plan has been followed up to the present time and so far approximately $15,000.00 have been added to the fund from this source. It will be realized, of course, that the salvage

value of these improvements was relatively small compared with the original cost because of the fact that very few buildings could be moved from the land and therefore had to be dismantled.

Quite a considerable portion of the whole area is covered with timber of merchantable value, most of which is suitable for cord wood. In our condemnation judgments we paid between $174,-
105 000.00 and $175,000.00 for so-called timber, which would produce, when cut into cord wood lengths, approximately 350,000 cords of wood. So far we have not sold any of this timber. On the eastern end of the tract, where it was far removed from the camp, we discovered that a large number of owners desired to keep their timber, with the privilege of removing it within two years from October 1st, 1918, subject to the regulations current in this State as to fire hazards. In granting the owners this privilege we of course did not pay for the timber, and saved approximately $75,-000.00, which was used to pay judgments for land of military value. This was done after consulting with the various local departments on the question as to whether it would interfere with the use of the ground for military purposes. This reservation does not permit the owners to live on the property but merely to go and get the timber, and all such rights will expire by limitation on October 1st, 1920.

The plan of securing as much land as our money will buy necessitated securing condemnation judgments on more land than was covered by actual cash on hand at the particular time. The lands not actually paid for are shown in yellow on the map marked "Exhibit B." We are now going through the process of selling the balance of the improvements and such equipment as we have on hand in order to convert all available resources into cash. Unless we are permitted to realize on the timber we shall lack approximately twenty thousand dollars of the amount sufficient to secure all the lands colored in yellow on "Exhibit B."

In your letter of July 15, 1918, modifying the original proposition of December 2, 1916, you accepted and approved as part of the agreement the lands as then actually acquired and shown on the map attached thereto marked "Exhibit A." You likewise approved the plans of acquiring such additional lands as the funds available would buy. This plan was substantially followed with the exception of eliminations hereinbefore referred to.

In order to sum up the foregoing discussion I submit the following:

(A) That the original proposition as outlined in your letter
106 of December 2, 1916, and as modified by your letter of July 15, 1918, be further modified by the approval of the acquisition of the additional lands as secured since July 15, 1918, and shown on the attached map marked "Exhibit A" with explanatory notes hereto attached, and that this additional land, together with the lands already approved in your letter of July 15, 1918, be deemed all the lands covered by your letter of December 2, 1916, subject to the right of Pierce County to eliminate such tracts of land colored in yellow on "Exhibit B" as can not be paid for.

(B) The formal approval of the plan of permitting the Board of County Commissioners of Pierce County to sell the improvements, using the funds at their disposal for acquiring lands and paying expenses.

(C) Authority to dismiss the condemnation suits as to all lands outside of the exterior boundaries as designated by the purple lines, and that part of the eliminated lands inside the purple lines, and such part of the lands which is designated in yellow on "Exhibit B" as Pierce County is finally unable to pay for.

(D) The formal approval of the plan of permitting the owners to keep, without pay, such timber on certain tracts as they shall cut and remove within two years from October 1, 1918.

Inasmuch as we are holding the jury awaiting your decision with reference to the above matters, an early reply to our inquiry will be greatly appreciated. It is our desire to close the condemnation suits as quickly as possible and submit our title and deed to the whole tract to you for your approval.

Respectfully submitted.

J. T. S. LYLE,
Special Attorney for Pierce County.

107 J. T. S. Lyle.
Scott Z. Henderson.

LAW OFFICES OF LYLE & HENDERSON,
TACOMA BUILDING, TACOMA, WASHINGTON,
March 17, 1919.

From: J. T. S. Lyle, special attorney for Pierce County.
To: Secretary of War, Washington, D. C.
Subject: Acquiring of lands by Pierce County for military purposes of the United States at American Lake, Washington.

SIR: The purpose of this letter is to supplement my letter of March 11, 1919, and to be in the nature of a memorandum of the conclusions of the conference held in the office of Major General J. D. Leitch, commanding officer, Camp Lewis, American Lake, Washington, on March 16, 1919, at which conference there was present Newton D. Baker, Secretary of War; General P. C. March, Chief of Staff; Major General J. D. Leitch; and J. T. S. Lyle, special attorney and official representative of Pierce County, Washington.

At this conference I called attention to the two maps, marked "Exhibits A and B." In the discussion with reference to the lands condemned but not taken, I found that the isolated tracts as shown on Exhibit "B" did not give an adequate idea as their relation to the whole area, so I have had them added to Exhibit "A" and colored green so that Exhibit "B" may be disregarded. The lands shown on Exhibit "A" are divided into two classes:

First. The lands which have been acquired and paid for.

Second. The lands against which judgments of condemnation had been taken but which had not actually been paid for. The total amount in this class being $29,168.33 toward the payment of

ich Pierce County will have funds available of approximately
0,000.00 after the salvaging of the buildings, etc., is completed.
I also called attention to the various timbered areas and sug-
sted that Pierce County either be permitted to sell a sufficient
ount of timber to pay for those lands condemned, but not ac-
tually paid for, or that the quartermaster's department pur-
8 chase the timber, the same to be used for fuel purposes at a
purchase price to be determined by the amount necessary to
y for the lands colored in green on Exhibit "A."
In the discussion which followed, the Secretary of War expressed
e opinion that in his judgment it would be desirable, if funds
re available, to likewise acquire that part of the lands situated in
north one-half of sections 21-23, township 19, range 2 east,
ich is crosshatched in purple on Exhibit "A," in order, as he
ted, to remove any danger of having joy zones within the
undaries of the reservation.
The Secretary of War requested that the decision on these mat-
s be deferred until his return to Washington, at which time it
uld be ascertaind whether or not there would be funds available
these purposes.
This is the status of the matter at this time.
Respectfully submitted.

J. T. S. LYLE.
Special Attorney for Pierce County.

O. G. O.
Please let bearer have original of letter to Mr. J. T. S. Lyle, Ta-
ma, Wash. He is here in the city and I was to deliver it to him
rsonally.
I understand it went through usual channels of mail & file O. G. O.

E. O. HENDERSON, *Col. GS.*

343 Done. Kox.

) *United States Exhibit No. 9.*

[Copy.]

the Superior Court of the State of Washington, for Pierce County.

ERCE COUNTY, WASHINGTON, EX REL. THOMAS H. BELLINGHAM, JAMES R. O'FARREL, and JAMES W. SLAYDEN, County Commissioners of said County, petitioner, v. JOHN AUGUST ABRAHAMSON ET AL., RESPONDENTS.	No. 41285.

Findings of fact and judgment and judgment of appropriation.

This cause coming on regularly to be heard before the court, thout a jury, a jury having been waived, upon the question of essing damages, if any, resulting to any person, corporation, or

company by reason of the appropriation and use of the hereinafter described land, real estate, premises, or other property sought to be acquired for a public use in this action, the petitioner appearing by J. T. S. Lyle, Esq., its attorney, and the respective respondents hereinafter named appearing by their respective attorneys or in propria persona, as will more fully appear by the stipulations filed herein; and the parties interested in the lands hereinafter described, who have appeared in this cause, having stipulated that this cause might be submitted to the court in so far as the same relates to the lands hereinafter described upon the testimony of the witnesses of the petitioner and that a judgment might be entered in accordance with such testimony, said stipulations having been read and filed by the court; and the other respondents, if any, interested in said lands having been duly served with notice in the manner required by law and having failed to appear or enter any appearance in this cause; and the petitioner having submitted to the court an appraisement of respectively the just compensation for the taking and appropriation of the land, real estate, premises, or other property hereinafter described, made by the following persons:

110	G. M. Hellar,	J. C. Taylor,	Milford Jacobs,
	J. M. Keen,	A. E. Agnew,	W. I. Moulton,
	C. F. Mason,	W. U. Smith,	L. T. Shelton,
	S. R. Balkwill,	J. D. McCabe,	North Brooks,
	Edmund Rice,	C. F. Gray,	C. J. Harding,
	M. F. Hawk,	W. N. Ketner,	
	H. V. Railsback,	John Benthien,	

and having produced its witnesses, who substantiated said appraisement; and the court being fully advised in the premises, does now find that the just compensation to be paid to the owners, occupants, tenants, encumbrancers, and others interested therein for the taking and appropriation of the land, real estate, premises, or other property hereinafter described is the respective sums hereinafter set forth at length after the respective sums hereinafter described and from such findings of fact the court does conclude that a judgment should be entered in accordance with such findings.

Now, therefore, it is ordered, adjudged, and decreed as follows, to wit:

That the just compensation to be paid to the owners, occupants, tenants, encumbrancers, and others interested therein for the taking and appropriation of the following-described land, real estate, premises, or other property situated in Pierce County, Washington, to wit:

> Lot six (6), block eleven (11), American Lake Park, section seventeen (17), township nineteen (19) north, range two (2) east, W. M.,

which the respondent, Herbert A. Bell, a single man, and all persons unknown, claiming any right, title, lien, or interest in or to the

roperty described herein, claim to own or be otherwise interested
n, is the sum of forty and no/100 ($40.00) dollars.
No. 379-A—page 37.

That the just compensation to be paid to the owners, occu-
11 pants, tenants, encumbrancers, and others interested therein
for the taking and appropriation of the following-described
and, real estate, premises, or other property situated in Pierce
County, Washington, to wit:

Beginning 132.37 feet north of southwest corner of north-
west quarter (NW. ¼) of southwest quarter (SW. ¼) of section
twenty (20), township nineteen (19) north, range two (2) east
of Willamette meridian; thence south 89 degrees 49 minutes
east 1,300.07 feet; thence north 54 degrees 50 minutes east 122.69
feet; thence south 76 degrees east 87.82 feet; thence south 39
degrees 35 minutes east 100 feet; thence south 89 degrees 49
minutes east 498 feet to meander line of American Lake; thence
northerly along said meander line to a point 2,353 feet, more or
less, east and 726.70 feet south of northwest corner of southwest
quarter of said section; thence west 2,553 feet more or less to
beginning, including all shore lands abutting or adjacent thereto,
section 20, twp. 19 north, R. 2 east, W. M.

Also beginning at southwest corner of northwest quarter
(NW. ¼) of southwest quarter (SW. ¼) of section twenty (20),
township nineteen (19) north, range two (2) east of Williamette
meridian; thence north 132.27 feet; thence south 89 degrees 49
minutes east 1,300.07 feet; thence north 54 degrees 50 minutes
east 122.69 feet; thence south 76 degrees east 87.82 feet; thence
south 39 degrees 35 minutes east 100 feet; thence south 89 de-
grees 49 minutes east 498 feet, more or less, to meander line of
American Lake; thence along said meander line southeasterly,
southwesterly, and northwesterly to northeast corner of lot 5,
said section; thence north 89 degrees 49 minutes west along north
line of said lot 5; 1,352 feet, more or less, to beginning, includ-
ing all shore lands abutting or adjacent thereto; section 20,
township 19 north, range 2 east, W. M.,

hich the respondents Thomas B. Dorman and Anna McFadon
orman, his wife; Donald McFadon, a bachelor, and National
Bank of Tacoma, a corporation, State of Washington; Lucian
2 F. Cook and Jane Doe Cook, his wife; and all persons un-
known, claiming any right, title, lien, or interest in or to the
roperty described herein, claim to own or be otherwise interested in,
the sum of sixteen thousand five hundred fifty-four and 56/100
16,554.56) dollars.

#200—pg. 37. #201—pg. 37.

That the just compensation to be paid to the owners, occupants,
nants, encumbrancers, and others interested therein for the taking
d appropriation of the following-described land, real estate,
emises, or other property situated in Pierce County, Washington,
wit:—

Lot three (3) in section thirty-one (31), township nineteen (19) north, range two (2) east of Willamette meridian,

which the respondents Frank Eickmann and Lena Eickmann, his wife, and all persons unknown, claiming any right, title, lien, or interest in or to the property described herein, claim to own or be otherwise interested in, is the sum of five hundred sixty-eight and 30/100 (8568.30) dollars.

#198—pg. 28.

That the just compensation to be paid to the owners, occupants, tenants, encumbrancers, and others interested therein for the taking and appropriation of the following-described land, real estate, premises, or other property situated in Pierce County, Washington, to wit:

West half of southeast quarter of northeast quarter (W. ½ of SE. ¼ of NE. ¼); east half of southeast quarter of northeast quarter (E. ½ of SE. ¼ of SE. ¼), less north 7 acres in section eighteen (18), township nineteen (19) north, range two (2) east of Willamette meridian,

which the respondent Alfred L. Eltonhead (single) and all persons unknown, claiming any right, title, lien or interest in or to the property described herein, claim to own or be otherwise interested in, the sum of four hundred eigthy-two and 60/100 (8482.60) dollars.

#189—pg. 31.

That the just compensation to be paid to the owners, occu-
113 pants, tenants, encumbrancers, and others interested therein for the taking and appropriation of the following-described land, real estate, premises, or other property situated in Pierce County, State of Washington, to wit:

Northwest quarter of northeast quarter, less 2 acres in southwest corner, said 2 acres being described as follows: Beginning at southwest corner of northwest quarter of northeast quarter of section 24, township 19 north, range one east, thence north 20 rods; thence east 16 rods; thence south 20 rods; thence west 16 rods to beginning in section twenty-four (24), township nineteen (19) north, range one (1) east of Willamette meridian,

which the respondents William Edward Lund and Jane Doe Lund, his wife, and all persons unknown, claiming any right, title, lien, or interest in or to the property described herein, claim to own or be otherwise interested in, is the sum of five hundred eighty-seven and 50/100 (8587.50) dollars.

#23—pg. 30.

That the just compensation to be paid to the owners, occupants, tenants, encumbrancers, and others interested therein for the taking and appropriation of the following-described land, real estate, premises, or other property situated in Pierce County, Washington, to wit:

Northwest quarter (NW. ¼) of southeast quarter (SE. ¼) of section twenty-nine (29), township nineteen (19) north, range two (2) east of Willamette meridian.

which the respondents, Eva C. Middleton and John Doe Middleton, her husband, and all persons unknown, claiming any right, title, lien, or interest in or to the property described herein, claim to own or to be otherwise interested in, is the sum of three thousand five hundred and no/100 ($3,500.00) dollars.

#246—pg. 30.

That the just compensation to be paid to the owners, occupants, tenants, encumbrancers, and others interested therein for the taking and appropriation of the following-described land, real estate,
114 premises or other property situated in Pierce County, State of Washington, to wit:

Lots four (4) and five (5) in block one;

Lots six (6) to nine (9) in block three (3);

Lots five (5), six (6), and eight (8) in block five (5);

Lots seven (7), nine (9), and ten (10) in block six (6);

Lots one (1), three (3), and eight (8) in block eleven (11);

Lots one (1) to eight (8) in block twelve (12), all in American Lake Park, in section seventeen (17), township nineteen (19) north, range two (2) east of Willamette meridian, according to the recorded plat thereof on file in the office of the auditor of Pierce County, Washington,

which the respondents Helen I. Nolan, a widow, and all persons unknown, claiming any right, title, lien, or interest in or to the property described herein, claim to own or be otherwise interested in, is the sum of five thousand two hundred and fifty-one and 40/100 ($5,251.40) dollars.

#379—page 37.

That the just compensation to be paid to the owners, occupants, tenants, encumbrancers, and others interested therein for the taking and appropriation of the following-described land, real estate, premises, or other property situated in Pierce County, State of Washington, to wit:

The land covered by this stipulation is situated in township eighteen (18) north of range one (1) east of the Willamette meridian, in Pierce County, State of Washington, and described as follows, to wit:

All of fractional section one (1);

Lots one (1), two (2), three (3), south half of north half S. ½ of N. ½) and south half (S. ½) of section three (3);

Lots three (3), four (4), seven (7), eight (8), northeast quarter (NE. ¼), north half of southeast quarter (N. ½ of SE. ¼) and southeast quarter of southeast quarter (SE. ¼ of SE. ¼) of section nine (9), excepting a strip of land (or so much of such strip as may be within said premises) of the width of three hundred (300) feet, being one hundred fifty (150) feet in
115 width on each side of the center line of the main track of the Northern Pacific Railway as the same is now located, constructed, and operated over and across said described land or within one hundred fifty (150) feet of same;

East half (E. ½) and east half of west half (E. ½ of W. ½) of section eleven (11);

Northwest quarter (NW. ¼) and southwest quarter of southwest quarter (SW. ¼ of SW. ¼) of section thirteen (13);

Northeast quarter (NE. ¼), east half of northwest quarter (E. ½ NW. ¼), northeast quarter of southwest quarter (NE. ¼ of SW. ¼), north half of southeast quarter (N. ½ of SE. ¼), southeast quarter of southeast quarter (SE. ¼ of SE. ¼) and lots two (2) and three (3) of section fifteen.

which the respondent Northern Pacific Railway Company, Bankers Trust Company, trustee, successor of Mercantile Trust Co., trustee, and all persons unknown, claiming any right, title, lien, or interest in or to the property described herein, claim to own or be otherwise interested in, is the sum of thirty-five thousand four hundred ninety-one and 17/100 ($35,491.17) dollars.

#101–23. #107–22. #140–21. #150–22.

That the just compensation to be paid to the owners, occupants, tenants, encumbrancers, and others interested therein for the taking and appropriation of the following-described land, real estate, premises, or other property situated in Pierce County, State of Washington, to wit:

Lot three (3) in block three (3) of American Lake Park, according to the recorded plat thereof on file in the office of the auditor of Pierce County, Washington, being in section seventeen (17), township nineteen (19) north, range two (2) east of Willamette Meridian.

which the respondents, Florence G. Ollar and Silas C. Ollar, husband and wife, and all persons unknown, claiming any right, title, lien, or interest in or to the property described herein, claim to own or be otherwise interested in, is the sum of forty and no/100 ($40.00) dollars.

#372—pg. 37.

116 That the just compensation to be paid to the owners, occupants, tenants, encumbrancers, and others interested therein for the taking and appropriation of the following-described land, real estate, premises, or other property situated in Pierce County, State of Washington, to wit:

Lots one (1) to thirty (30), both inclusive, block eighty-one (81);

Lots one (1) to twenty-eight (28), both inclusive, block eighty-two (82);

Lots one (1) to ten (10), both inclusive, block eighty-three (83);

Lots one (1) to seven (7), both inclusive, block eighty-four (84);

Lots one (1) to twenty-two (22), both inclusive, block eighty-five;

Lots one (1) to thirty (30), both inclusive, block eighty-six (86);

All in Nisqually City, section thirty-four (34), township nineteen (19) north, range one (1) east of W. M.,

which the respondents, E. H. Perry and Annie E. Perry, his wife, and all persons unknown, claiming any right, title, lien, or interest in or to the property described herein, claim to own or be otherwise interested in, is the sum of six hundred eighteen and no/100 ($618.00) dollars.

#326—page 24.

That the just compensation to be paid to the owners, occupants, tenants, encumbrancers, and others interested therein for the taking and appropriation of the following-described land, real estate, premises, or other property situated in Pierce County, Washington, to wit:

Lot two (2), southwest quarter (SW. ¼) of northeast quarter (NE. ¼); west half (W. ½) of southeast quarter (SE. ¼); lot three (3); east half (E. ½) of southwest quarter (SW. ¼); and southeast quarter (SE. ¼) of northwest quarter (NW. ¼); except that certain portion of said premises whereon is situated the dwelling house of Albert D. Arper and Mary E. Arper, and
117 containing ten (10) acres, more or less, particularly described as follows:

Beginning on north and south quarter section lines of said section two (2) at a joint 2,168 feet north of quarter section corner on south side of said section; thence north along quarter section line 225 feet; thence north 22 degrees east 674 feet; thence south 68 degrees east 500 feet; thence south 22 degrees west 897.47 feet; thence northwesterly 416 feet, more or less, to beginning, all in section two (2), township eighteen (18) north, range one (1) east of Willamette meridian,

which the respondents, L. Roy and Euphemia Roy, his wife; M. T. Michaels and Jane Doe Michaels, his wife, or John Doe Michaels, her husband; Edwin S. Ewing and Jane Doe Ewing, his wife; Pacific Northwest Lumber Company; S. S. Somerville and Jane Doe Somerville, his wife, or John Doe Somerville, her husband; Dupont Lumber Company; Elmer Somerville and Jane Doe Somerville, his wife; L. W. Becker and Jane Doe Becker, his wife, or John Doe Becker, her husband; W. H. Somerville and Jane Doe Somerville, his wife, or John Doe Somerville, her husband; Ailyn Oakes and Jane Doe Oakes, his wife; W. W. Oakes and Jane Doe Oakes, his wife, or John Doe Oakes, her husband; O. S. Nail and Jane Doe Nail, his wife, or John Doe Nail, her husband; D. T. Roland and Jane Doe Roland, his wife, or John Doe Roland, her husband; Hunt & Mottet Company; Robert Scott and Jane Doe Scott, his wife; Jesse Martz and Jane Doe Martz, his wife; Washington Machinery Depot; A. N. Fisher and Jane Doe Fisher, his wife, or John Doe Fisher, her husband; Roy & Roy Mill Company;

M. A. Arnold and Jane Doe Arnold, his wife, or John Doe Arnold, her husband, and all persons unknown, claiming any right, title, lien, or interest in or to the property described herein, claim to own or be otherwise interested in, is the sum of nine thousand six hundred and no/100 ($9,600.00) dollars.

#112—page 21.

That the just compensation to be paid to the owners, occupants, tenants, encumbrancers, and others interested therein for the
118 taking and appropriation of the following-described land, real estate, premises, or other property situated in Pierce County, State of Washington, to wit:

Southwest quarter of southwest quarter (SW. ¼ of SW. ¼); and south half of south half of northwest quarter of southwest quarter (S. ½ of S. ½ of NW. ¼ of SW. ¼) in section twelve (12), township eighteen (18) north, range one (1) east of Willamette meridian,

which the respondents O. Schuffert and Jane Doe Schuffert, his wife, or John Doe Schuffert, her husband, and all persons unknown, claiming any right, title, lien, or interest in or to the property described herein, claim to own or be otherwise interested in, is the sum of fifty-five hundred and no/100 ($5,500.00) dollars.

#133—page 21.

That the just compensation to be paid to the owners, occupants, tenants, encumbrancers, and others interested therein for the taking and appropriation of the following-described land, real estate, premises, or other property situated in Pierce County, State of Washington, to wit:

Northeast quarter of southwest quarter (NE. ¼ of SW. ¼), less Northern Pacific right of way in section thirty-five (35), township nineteen (19) north, range one (1) east of Willamette meridian,

which the respondents Herbert E. Stimpson and M. Eva Stimpson, his wife; Pacific Telephone & Telegraph Co., and all persons unknown, claiming any right, title, lien, or interest in or to the property described herein, claim to own or be otherwise interested in, is the sum of eight hundred and no/100 ($800.00) dollars.

#43—page 27.

That the just compensation to be paid to the owners, occupants, tenants, encumbrancers, and others interested therein for the taking and appropriation of the following-described land, real estate, premises, or other property situated in Pierce County, State of Washington, to wit:

Northwest quarter (NW. ¼) of northeast quarter
119 (NE. ¼), southwest quarter (SW. ¼) of northeast quarter (NE. ¼), lots one (1) and two (2);

Southeast quarter (SE. ¼) of northwest quarter (NW. ¼), northeast quarter (NE. ¼) of southwest quarter (SW. ¼), lot four (4);

Southeast quarter (SE. ¼) of southwest quarter (SW. ¼), southeast quarter (SE. ¼):

Southeast quarter (SE. ¼) of northeast quarter (NE. ¼), all in section thirty-one (31), township nineteen (19) north, range two (2) east of Willamette meridian.

Southwest quarter (SW. ¼), southeast quarter (SE. ¼), northeast quarter (NE. ¼), and south half (S. ½) of northwest quarter (NW. ¼), all in section thirty-two (32), township nineteen (19) north, range two (2) east of Willamette meridian.

Southeast quarter (SE. ¼) of section twenty-five (25), township nineteen (19) north, range one (1) east of Willamette meridian, except right of way of Northern Pacific Railway Company, also except: Beginning at concrete monument on intersection of center line of section (25) and line between sections 25 and 36; fence north along center line of sections 25, 769.2 feet fence southeasterly 266.4 feet on a curve of a 270-foot radius at which point the curve reverses; fence following a curve of 330-foot radius southeasterly 326.7 feet; fence following same curve southwesterly to intersection of a line between sections 25 and 36; fence west on section line between sections 25 and 36 to said monument.

Lots three (3) and four (4), less right of way of Northern Pacific Railway Company, in section thirty (30), township nineteen (19) north, range two (2) east of Willamette meridian.

Which the respondents Suburban Irrigation Company, a Washington corporation; Northern Pacific Railway Company; Pacific Telephone & Telegraph Company; Tacoma Gas Company; C. L. Fisher and Sarah Fisher, his wife, and all persons unknown claiming any right, title, lien, or interest in or to the property described herein, claim to own or be otherwise interested in, is the sum of twenty-five thousand three hundred seventy-four and 84/100 ($25,374.84) dollars.

120

=269—pgs. 28 and 29.

That the just compensation to be paid to the owners, occupants, tenants, encumbrancers, and others interested therein for the taking and appropriation of the following-described land, real estate, premises, or other property situated in Pierce County, Washington, to wit:

Southwest quarter (SW. ¼) of northwest quarter (NW. ¼) of northwest quarter (NW. ¼) section thirty-two (32), township nineteen (19) north, range two (3) east, W. M.,

which the respondents, Frank Waitt and Julia B. Waitt, his wife; Frank Waite and Jane Doe Waite, his wife; and all persons unknown, claiming any right, title, lien, or interest in or to the property described herein, claim to own or be otherwise interested in, is the sum of one hundred sixty-five and 50/100 ($165.50) dollars.

=421—page 28.

That the just compensation to be paid to the owners, occupants, tenants, encumbrancers, and others interested therein for the taking

and appropriation of the following-described land, real estate, premises, or other property situated in Pierce County, Washington, to wit:

Lot thirty (30) in block one hundred (100) and lot sixteen (16) in block one hundred and one (101) of Nisqually City, section thirty-four (34), township nineteen (19) north, range one (1) east of Willamette meridian.

which the respondents R. B. Whitaker and Jane Doe Whitaker, his wife, or John Doe Witaker, her husband; Daniel M. Mounts estate; Catherine Mounts and John Doe Mounts, her husband; John M. Mounts and Jane Doe Mounts, his wife; Christina McAllister and George McAllister, her husband; Frank Mounts and Katherine Mounts, his wife; Mary A. Marcus and T. D. Marcus, her husband; James Tighe Mounts and Mary S. Mounts, his wife; Belle Z. Mounts and John Doe Mounts, her husband, Tristen B.
121 Mounts and Jane Doe Mounts, his wife, or John Doe Mounts, her husband; Hilda Jensen and Geo. W. Jensen, her husband; Florence Grodvig and Oscar S. Grodvig, her husband; Catherine Easterday and F. R. Easterday, her husband; J. M. Mounts and Jane Doe Mounts, his wife, or John Does Mounts, her husband; D. M. Mounts and Jane Doe Mounts, his wife, or John Doe Mounts, her husband; and all persons unknown, claiming any right, title, lien, or interest in or to the property described herein, claim to own or be otherwise interested in, is the sum of eight and 56/100ths ($8.56) dollars.

#311—page 35.

And it further appearing to this court, upon competent proof thereof, that the just compensation so found by the court, together with the costs has been paid into court by the petitioner, it is therefore:

Ordered, adjudged, and decreed that title to the property above described be, and the same is hereby, vested in Pierce County, in fee simple, and that said Pierce County have, and is hereby, granted immediate possession of the property in respect to which such compensation has been so paid.

Done in open court this 26th day of January A. D. 1918.

M. L. Clifford, *Judge*.

—152, inc.

Ent. Jour. No. 163, page 149, Dept. No. 4, Jan. 29, 1918.
Ent. Ex. Doc. 32, p. 158 to 166, inc.
Filed in Superior Court Jan. 26, 1918.
E F McKenzie, clerk, by Geo F. Murray, Deputy.

[Endorsed:] Cause No. 41285. In the Superior Court of the State of Washington, for Pierce County. Pierce County, Washington, ex rel. Thomas H. Bellingham, James R. O'Farrell, and James W. Slayden, county commissioners of said county, petitioner, vs.
122 John August Abrahamson, et als., respondents. Findings of

fact and judgment and judgment of appropriation. J. T. S. Lyle, 815 Tacoma Bldg., Tacoma, Wash., attorney for petitioner.

United States Exhibit No. 10.

A. G. 313.54. Camp Lewis, Wash. (12–7–22).

UNITED STATES OF AMERICA,
WAR DEPARTMENT,
Washington, December 9, 1922.

I hereby certify that the attached copies of General Orders, Nos. 95, 101, and 109, War Department, 1917, the attached copy of Special Orders, No. 60, Headquarters, Western Department, 1917, the attached copy of the annual report of The Adjutant General of the Army to the Secretary of War for the fiscal year ending June 30, 1920, and the attached copies of telegrams are true and correct copies, and that the typewritten copies of telegrams were made from official records on file in The Adjutant General's office.

I further certify that the attached copy of letter of January 18, 1918, from the commanding general, 91st Division, Camp Lewis, Washington, subject "Roster of officers and report showing organization of 91st Division," and the attached copy of the report showing the organization of the division, referred to in paragraph 2 of the letter in question, are true photostat copies, made from the official records of The Adjutant General's office.

ROBERT C. DAVIS,
Major General, U. S. Army, The Adjutant General.

I hereby certify that Major General Robert C. Davis, U. S. Army, who signed the foregoing certificate, is the Adjutant General of the Army, and that to his certification as full faith and credit are and ought to be given.

In testimony whereof I, John W. Weeks, Secretary of War, have hereunto caused the seal of the War Department to be affixed and my name to be subscribed by the assistant and chief clerk
123 of the said department, at the City of Washington, this 9th day of December, 1922.

[SEAL.]

JOHN W. WEEKS,
Secretary of War.
By JOHN C. SCOFIELD,
Assistant and Chief Clerk.

[Memo.—Attached here to original exhibit are General Orders, Nos. 95, 101, 109, Special Orders, No. 60, and report of The Adjutant General of the Army to the Secretary of War, 1920, but are here omitted by agreement.]

320.2. 91st Div. (Misc. Div.)
B136CH. 67 Govt.

Hd. American Lake, Wash. 107P 28.
1917, Sep. 28, p. m. 4.44.

Adjutant General of the Army,
Washington.

Telegrams recently received by constructing quartermaster indicate organizations this division to be filled to maximum strength period Also that training battalions are to be one thousand men instead of six hundred twelve as prescribed general orders one hundred one request information immediate if these changes are to be made period No orders or instructions have been received here as yet

Greene.

Recd. A. G. O. Sept. 29–17.

A. G. O.
320.2 91st Div.

Oct. 1, 1917.

Commanding General, Camp Lewis,
American Lake, Washington.

Reference your telegram September twenty-eighth. Cantonment at Camp Lewis is being made to accommodate one maximum strength division of twenty-seven thousand one hundred fifty two: one separate infantry regiment of three thousand seven hundred fifty five: one depot brigade of ten thousand six hundred seventy-three: organized into training battalions of six hundred twelve men each: corps and army troops to the number of six thousand two hundred ten. Troops under your command should be organized as prescribed in General Orders one hundred nine, War Department, nineteen seventeen.

McCain.

124 A. G. O. HGL/RHM
454. 91st Div. (Misc. Div.)

May 25, 1918.

Commanding General, 91st Division,
Camp Lewis, American Lake, Washington.

Animals pertaining to your division will probably be turned over to auxiliary remount depot your camp period. Definite instructions will be sent you when orders are issued for movement.

McCain.

A. G. O.
370.5. 91st Div. (Misc. Div.) HFP

[To be sent in broken code.]

JUNE 12, 1918.

COMMANDING GENERAL, 91ST DIVISION,
Camp Lewis, Washington.

Send all units of your division now at Camp Lewis to port of embarkation, Hoboken, New Jersey, after arranging time of arrival and other details directly with commander of port. Advance party and school detachment will be called upon to entrain at early date. "A" units will be called upon to entrain about June twentieth and "B" units about June twenty-eighth. Do not entrain troops until commander of port advises you that he is ready to receive them. Have inspection made to determine if organizations and individuals are properly supplied with serviceable authorized clothing, equipment, and medical supplies, reporting result by telegraph, anything found lacking to be reported in detail. Leave enemy aliens behind. If any so left, report number. Animals pertaining to above organizations will be turned over to commanding officer, auxiliary remount depot, Camp Lewis. No detachment from above organizations will be left to care for animals.

McCAIN.

A. G. O. HGL/HFP
370.02 (Misc. Div.)

JUNE 13, 1918.

COMMANDING GENERAL, 91ST DIVISION,
Camp Lewis, Washington.

Questions of transporting one infantry battalion with band through Canada over Canadian Pacific being considered. These troops would visit Ottawa for inspection by Governor Gen-
125 eral of Canada and parade in various cities along the route. Idea of movement is to increase friendly interest between people of Canada and United States. Railroad facilities would be furnished by Canadian Pacific. This information is furnished now in order that you may make tentative plans. As soon as settled you will be further advised.

McCAIN.

A. G. O. HGL/IEK
451 (Misc. Div.)

[Code telegram.]

JUNE 17, 1918.

COMMANDING GENERAL, 91ST DIVISION,
Camp Lewis, Washington.

Upon the departure of your division overseas, escort wagons, spring wagons, and ambulances and medical department motor cycles pertaining to your division will be left at camp. Water carts, ration carts, medical carts, and combat wagons will accompany your division.

McCAIN.

A. G. O.
AG 523.02 Camp Lewis (Misc. Div.) HGL-EKL

[To go in broken code.]

JUNE 18, 1918.

COMMANDING GENERAL, 91ST DIVISION,
Camp Lewis, American Lake, Washington.

Retelyours fourth. Authority granted to transport medical alcohol and ether as freight, complying with any railway instructions relative to shipment this class freight.

McCAIN.

A. G. O.
370.5 Camp Lewis B. H. (Misc. Div.) rah:bmg

[To be sent in broken code.]

JUNE 20, 1918.

COMMANDING GENERAL, 91ST DIVISION,
Camp Lewis, American Lake, Washington.

Reyourtel June fifteenth with reference overseas portion base hospital no part personnel cantonment base hospital will accompany ninety-first division. Assumed reference is made to overseas base hospital mobilized there that has recently been moved.

126 A. G. O. McCAIN.
472 (Misc. Div.)

[To be sent in broken code.]

JUNE 25, 1918.

COMMANDING GENERAL, 91ST DIVISION,
Camp Lewis, American Lake, Washington.

Field artillery material to be left at Camp Lewis upon departure your division for duty oversees.

McCAIN.

HEADQUARTERS 91ST INFANTRY DIVISION,
OFFICE OF THE CHIEF OF STAFF,
Camp Lewis, American Lake, Wash., January 16, 1918.

From: The Commanding General, 91st Division.
To: The Adjutant General of the Army (room 355).
Subject: Roster of officers and report showing organization of 91st Division.

1. In compliance with letter from The Adjutant General's office, dated December 27, 1917, you are herewith furnished a roster, in triplicate, of the officers assigned to this division, arranged alphabetically, stating the company, regiment, brigade, or other unit to which they belong, or duty to which assigned.

(a) The names of officers of the depot brigade are shown by separate list included herewith.

2. Report showing the organization of the division, arranged according to sample furnished by your office, is enclosed.

3. The roster of officers was originally made up as of January 1st, but new arrivals have been interpolated, so that the list is complete as of date January 15, 1918.

(a) The report showing organization of the division is taken from organization returns for the month of December, 1917.

FRED F. FOLTZ,
Brigadier General N. A.

ECH–P. 9 encl.
M. D. F. File 2/7/18 S. J. F. 355.

127 Headquarters 91st Division, Camp Lewis,
American Lake, Washington.

Report Showing Organization of Division.

Commanding General—
Maj. Gen. Henry A. Greene, N. A.
Aides—
Capt. Maurice D. Welty, Inf. U. S.
2d Lt. George P. Raymond, F. A. R. C.
Chief of Staff—
Lieut. Col. Herbert J. Brees, F. A. N. A.
1st Asst. Chief of Staff—
Major Francis W. Clark, F. A. Gen. St.
2d Asst. Chief of Staff—
Major Clark Lynn, I. N. A.
Assts. to Chief of Staff, Attd.—
Major Edward C. Hanford, I. R. C.
Capt. E. Alexander Powell, I. R. C.
Division Adjutant—
Major Frederick W. Manley, I. N. A.
Assts. to Adjutant—
Major Dorsey W. Thickstun, A. G. R. C.
Capt. Henry D. Mack, I. R. C.
Attchd. Capt. Wm. P. Coakley, I. N. A.
Inspector—
Major Avery D. Cummings, I. N. A.
Asst. Inspector (S. D.)—
Capt. Omar N. Bradley, 14th Inf.
Judge Advocate—
Major George V. Strong, J. A. G. D.
Asst. Judge Advocate—
Major Eugene R. West, J. A. N. A.
Division Quartermaster—
Lieut. Col. Frederick W. Coleman, I. N. A.
Assts. to Div. Quartermaster—
Major C. S. Bendel, Q. M. C. U. S. A.

128 Capt. F. A. Kidwell, Q. M. R. C.
Capt. C. F. Startzman, Q. M. C. N. A.
1st Lieut. Joseph Hartman, Q. M. R. C.
2d Lieut. John C. Kittle, Q. M. N. A.
Division Surgeon—
Lieut. Col. Peter C. Field, M. C. U. S. A.
Asst. to Div. Surgeon—
Capt. John G. Strohm, M. R. C.
Div. Med. Training Officer—
Capt. Frank E. Winter, M. R. C.
Med. Inst. Tr. Cp. Activities—
Major Calvan S. White, M. R. C.
Div. Sanitary Inspector—
1st Lieut. Frank R. Mount, M. R. C.
Assts. to San. Inspector—
Capt. E. W. White, M. R. C.
1st Lieut. Max R. Charlton, M. R. C.
1st Lieut. Vernon L. Bishop, M. R. C.
1st Lieut. R. E. Whitney, San. C.
Div. Ordnance Officer—
Major Ralph E. Herring, O. R. C.
Div. Signal Officer—
Major Charles L. Wyman, Inf. N. A.
Camp Signal Supply Officer—
1st Lieut. H. Lancaster, S. R. C.
Div. Mustering Officer—
Lieut. Col. Frederick Knabenshue, I. N. A.
Asst. Div. Must. Off. (S. D.)—
Lieut. Col. Richmond V. Smith, I. N. A.
Intelligence Officer—
Capt. Maurice D. Weity, Aid de Camp.
Asst. Intelligence Off.—
Capt. E. Alexander Powell, I. R. C.
(Inst. Div. School of Intelligence.)
War Risk Ins. Officer—
Capt. R. C. Goodale, G. A. N. A.
129 Assts. to Ins. Off. (S. D.)—
2nd Lieut. Ralph H. McCurdy, I. R. C.
2nd Lieut. Charles F. Vandervoort, I. R. C.
Camp Post Exchange Officer—
Capt. Dieterick C. Oldenborg, Q. M. R. C.
Camp Athletic Director—
Capt. T. G. Cook.
Boxing Instructor—
Willie Ritchie.
Singing Instructor—
Festyn Davies.

Personnel Section.

Commanding Officer—Capt. Daniel J. Coman, I. R. C.
No. officers—1 assgnd. 1 attchd. No men—None assgnd. 10 S. D. 1 civilian expert.

Intelligence Section.

Commanding Officer—Capt. Maurice D. Welty, Aid de Camp.
(Not yet organized. Division School of Intelligence for Officers and men just opened.)
Original on file in Eff. Sec. with Col. Chappelear.
M. D. F. File 2/7/18. S. J. F.

Statistical Section.

Commanding Officer—1st Lt. G. D. de Balaine, A. G. D. N. A.
No. officers—3 assigned. No men—1 assgnd. 30 S. D.

Headquarters Troop.

Commanding Officer—Capt. James Crabbe, F. A. N. A.
No. officers—3 assgnd. No. men—126 assgnd. 4 attchd. 346 Machine Gun BN. (4 companies.)

(Division Machine Gun Bn.)

Commanding Officer—Major Francis C. Endicott, I. N. A.
No. officers—33 assgnd. 6 attchd. No. men—627 assgnd. 31 attchd.

181st Infantry Brigade.

Commanding officer—Brig. Gen. Henry D. Styer, N. A.
Personal Aides—
2nd Lieut. Jack W. Browne, F. A. N. A.
2nd Lieut. Harry C. Long, I. R. C.
120 No. of officers—204 assgnd. 46 attchd. No. men—5,972 assgnd. 80 attchd.

347th Machine Gun Bn.

Commanding Officer—Major Arthur W. Hanson, I. N. A.
No. officers—22 assgnd. No. men—423 assgnd. 2 attchd.

361st Infantry.

Commanding Officer—Col. William D. Davis, I. N. A.
No. officers—75 assgnd. 36 attchd. No. men—2,400 assgnd. 39 attchd.

362nd Infantry.

Commanding Officer—Col. Pegram Whitworth, I. N. A.
No. officers—104 assgnd. 10 attchd. No. men—3,135 assgnd. 41 attchd.

182nd Infantry Brigade.

Commanding Officer—Brig. Gen. Frederick S. Foltz, N. A.
Personal Aide—2nd Lieut. Lewis W. Douglas, F. A. R. C.
No. officers—223 assgnd. 28 attchd. No. men—6,507 assgnd. 84 attchd.

348th Machine Gun Bn.

Commanding Officer—Major Thomas N. Gimperling, I. N. A.
No. officers—19 assgnd. No. men—463 assgnd. 3 attchd.

363rd Infantry.

Commanding Officer—Col. Harry LaT. Cavenaugh, I. N. A.
No. officers—102 assgnd. 14 attchd. No. men—2,877 assgnd. 30 attchd.

364th Infantry.

Commanding Officer—Col. Elmer W. Clark, I. N. A.
No. officers—98 assgnd. 14 attchd. No. men—3,159 assgnd. 51 attchd.

19th Infantry Brigade (Attached).

Commanding Officer—Col. E. N. Jones, 44th U. S. Inf.
No. officers—103 assgnd. 77 attchd. No. men—2,302 assgnd. 87 attchd.

131

14th U. S. Infantry.

Commanding Officer—Col. William K. Jones, 14th U. S. Inf.
No. officers—48 assgnd. 43 attchd. No. men—914 assgnd. 33 attchd.
(NOTE.—This regiment has been placed at the disposal of the commanding general, Western Department, and is under orders to leave this camp.)

44th U. S. Infantry.

Commanding Officer—Col. Edward N. Jones, Inf. Reg.
No. officers—55 assgnd. 34 attchd. No men—1,388 assgnd. 54 attchd.

166 Field Artillery Brigade.

Commanding Officer—Brig. Gen. Edward Burr, N. A.
Personal Aides—
2nd Lt. Raymond P. Hartney, F. A. R. C.
2nd Lt. Otto G. Trunk, F. A. R. C.
No. officers—114 assgnd. 100 attchd. No. men—4,155 assignd. 79 attchd.

316th Trench Mortar Battery.

Commanding Officer—2nd Lt. James B. Bedingfield, F. A. R. C.
No. officers—3 assgnd. No. men—177 assgnd.

346 Regiment Field Artillery.

Commanding Officer—Col. Lewis S. Ryan, F. A. N. A.
No. officers—35 assgnd. 33 attchd. No. men—1,225 assgnd. 25 attchd.

347th Regiment Field Artillery.

Commanding Officer—Col. Ralph S. Granger, F. A. N. A.
No. officers—31 assgnd. 38 attchd. No. men—1,270 assgnd. 22 attchd.

348th Regiment Field Artillery.

Commanding Officer—Col. Sam F. Bottoms, F. A. N. A.
No. officers—42 assgnd. 28 attchd. No. men—1,440 assgnd. 29 attchd.

316th Regiment Engineers.

Commanding Officer—Col. Henry C. Jewett, E. N. A.
132 No. officers—44 assgnd. 14 attchd. No. men—1,458 assgnd. 1 attchd; 5 med. dept. attchd. 26 med. dept. attd.

Trains.

Commanding Officer—Col. Mathew E. Saville, I. N. A.

316th Train HQ. & Mil. Police.

Commanding Officer—Major Mark Y. Croxall, I. R. C.
No. officers—28 assgnd. No. men—299 assgnd.

316th Ammunition Train.

Commanding Officer—Lt. Col. Allen Smith, I. N. A.
No. officers—27 assgnd. 4 attchd. No. men—876 assgnd.

316th Supply Train.

Commanding Officer—James B. Woolnough, I. N. A.
No. officers—8 assgnd. 1 attchd. No. men—413 assgnd.

316th Engineer Train.

Commanding Officer—1st Lieut. Earle W. Fassett, E. R. C.
No. officers—2 assgnd. 1 attchd. No. men—81 assgnd.

316th Sanitary Train.

Commanding Officer—Lt. Col. Peter C. Field, M. C. U. S. A.
No. officers—48 assgnd. No. men—833 assgnd.

166th Depot Brigade.

Commanding Officer—Col. Peter W. Davison, I. N. A.
Col. Robert S. Offley, I. N. A.
Col. Geo. McD. Weeks, I. N. A., Dir. 3d Off. Training Camp.
Lieut. Col. Samuel B. McIntyre, I. N. A.
Lieut. Col. Edward R. Stone, I. N. A.
Lieut. Col. Harold D. Coburn, I. N. A.
Lieut. Col. Guy S. Norvell, I. N. A.
No. officers—205 assgnd. 35 attchd. No. men—5,280 assgnd. 459 attchd. Officers Training Bn. 545.

316th Field Signal Bn.

Commanding Officer—Major Wilford Danvers, Sig. R. C.
No. officers—11 assgnd. No. men—436 assgnd.

133 322nd Field Signal Bn.

Commanding Officer—Major Frank J. Sullivan, Sig. R. C.
No. officers—11 assgnd. 3 attchd. No. men—459 assgnd. 13 attchd.

405th Bn. Telegraph Signal Corps.

Commanding Officer—Major John A. Kick, Sig. R. C.
No. officers—9 assgnd. No. men—207 assgnd.

Bakers & Cooks School.

Commanding Officer—Capt. Irving A. Young, Q. M. R. C.
No. officers—2 assgnd. 5 attchd. No. men—335 assgnd. 16 attchd.

Bakery Company #344.

Commanding Officer—2nd Lieut. William J. Pease, Q. M. N. A.
No. officers—1 assgnd. No men—94 assgnd.

Auxiliary Remount Depot #331.

Commanding Officer—Capt. Joseph W. Jackson, Q. M. R. C.
No. officers—11 assgnd. 3 attchd. No men—400 assgnd.

Base Hospital.

Commanding Officer—Major Eugene G. Northington, M. C.
No. officers—44 assgnd. 74 attchd. No. men—383 assgnd. 102 attchd.

Camp Quartermaster.

Commanding Officer—Major James H. Como, Q. M. C.
No. officers—20 assgnd. No. men—541 assgnd.

116th Ordnance Depot Company.

Commanding Officer—Capt. Charles B. Lewis, O. N. A.
No. officers—5 assgnd. No. men—84 assgnd.

Motor Truck Company #355.

(Included under Camp Quartermaster.)

Commanding Officer—2nd Lieut. Fred T. Neville, Q. M. R. C.
No. officers—1 assigned. No. men—75 assgnd.

Constructing Quartermaster.

(Included under Camp Quartermaster.)

420th Engineer Depot Detachment.

Commanding Officer—Capt. Vernon C. Suckow, E. R. C.
No. officers—2 assgnd. No. men—20 assgnd.

134 316th Mobile Ordnance Repair Shop.

(Included under 316th Ammunition Train.)

Commanding Officer—Ray S. Jones, O. D. N. A.
No. officers—1 assgnd. No. men—36 assgnd.

United States Exhibit No. 11.

[Memo.—This exhibit, which is a map of Camp Lewis Military Reservation donated by Pierce County, Washington, is not here reproduced by agreement.]

Defendant's Exhibit A.

No. ——— Certified Copy No. ———

UNITED STATES OF AMERICA.

THE STATE OF WASHINGTON, *Department of State.*

To all to whom these presents shall come,

I, J. Grant Hinkle, secretary of state of the State of Washington and custodian of the seal of said State, do hereby certify that I have carefully compared the annexed copy of Chapter 3, house bill 85 of the Session Laws of 1917 imposing indebtedness on Pierce County for the United States Army post, with the original copy of said chapter 3, house bill 85 of the Session Laws of 1917 now on file in this office, and find the same to be a full, true, and correct copy of said original and of the whole thereof, together with all official endorsements thereon.

In testimony whereof, I have hereunto set my hand and affixed hereto the seal of the State of Washington. Done at the capital, at Olympia, this 12th day of December, A. D. 1922.

[SEAL.]

J. GRANT HINKLE,
Secretary of State.

By A. M. KITTO,
Assistant Secretary of State.

135 Comp'd DHFO. to EFP.O.

Session Laws State of Washington 1917.

(H. B. 85.)

Imposing indebtedness on Pierce County for United States Army Post.

An act imposing upon Pierce County, as an arm and agency of the State, an indebtedness not exceeding two million dollars, exclusive of interest; requiring such county to issue its negotiable bonds therefor, levy taxes to pay the same with interest, acquire, by condemnation or otherwise, approximately seventy thousand acres of land in such county, and donate and convey the same to the United States for a permanent mobilization, training, and supply station for any or all such military purposes, including supply stations, the mobilization, disciplining, and training of the United States Army, State militia, and other military organizations, as are now or may be hereafter authorized or provided by or under Federal law; conferring on such county the power of eminent domain for the purposes of this act, and providing procedure therefor; granting the consent of the State to such conveyance and ceding exclusive legislative jurisdiction to the United States over the lands so conveyed; declaring the existence of an exigency requiring the State and its governmental agencies to aid the Federal Government; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

SECTION 1. Whereas, in the judgment of the Legislature of the State of Washington, an exigency has arisen demanding the exercise of the sovereign power of the State to aid in repelling invasion, suppressing insurrection, and defending the State in war; and

Whereas it is the duty of the State and its governmental agencies to aid the National Government to the full extent of their means and ability; and

Whereas the success or defeat of the National Government is equally the success or defeat of the State; and

136 Whereas by the express mandate of Article X of the State constitution it is made the duty of the legislature to provide by law for organizing and disciplining the militia in such manner as it may deem expedient not incompatible with the Constitution and laws of the United States; and

Whereas by acts of Congress, including those approved June 3rd, 1916, and August 29th, 1916, and regulations of the War Department, disciplining by the Federal Government of the State militia (Nation Guard) and other Federal, State, and local military organizations, at mobilization, training, and supply stations is, among other things provided, which method of disciplining the militia and other military organizations is, in the judgment of the legislature, deemed expedient and proper and not incompatible with the Constitution and laws of the United States or existing laws of this State; and

Whereas the Secretary of War, with the approval of the President of the United States, deeming it expedient, has agreed on behalf of the Federal Government to establish in Pierce County, Washington, a permanent mobilization, training, and supply station for any or all such military purposes as are now or may be hereafter authorized or provided by or under Federal law, on condition that land in Pierce County, aggregating approximately seventy thousand acres, at such location or locations as have been or may be hereafter, from time to time selected or approved by the Secretary of War, be conveyed to the United States, with the consent of the State of Washington, free of cost to the United States; and

Whereas in the judgment of the legislature, the location of such permanent mobilization, training, and supply station within the limits of Pierce County, Washington, will aid and be of public benefit and advantage to the Nation and State in repelling invasion, suppressing insurrection, defending the Nation and State in war, and disciplining the militia, in which general public benefit and advantage Pierce County will also proportionately share, but in addition to its general benefit, it will also enjoy additional and special
137 benefits, with other local benefits and advantages not accruing to the Nation and other counties in the State, to an extent exceeding the cost of acquiring by condemnation or otherwise, the site selected or to be selected as aforesaid, aggregating approximately seventy thousand acres of land; and

Whereas, in the judgment of the legislature, the site aforesaid can be acquired for not exceeding two million dollars; and

Whereas at a special election held in Pierce County on the 6th day of January, 1917, the voters of such county, by a more than three-fifths majority of those voting at said election, attempted to authorize the incurrence of an indebtedness of two million dollars, with interest, with which to acquire approximately seventy thousand acres of land in said county, and attempted to authorize such county to convey the same to the United States to be used as a permanent mobilization, training, and supply station, for which attempted exercise of authority it is doubtful whether there was then in existence any law authorizing it, but the fulfilment of which purpose by Pierce County should, in the judgment of the legislature, be required by the State.

SEC. 2. That there is hereby imposed upon the county of Pierce, in the State of Washington, an indebtedness not exceeding, exclusive of interest, two million dollars, and the county commissioners of such county, acting as an arm and agency of the State, are hereby directed to incur an indebtedness not exceeding, exclusive of interest, two million dollars, with which such county, as an arm and agency of the State, is hereby required to acquire, by condemnation or otherwise, land in Pierce County, Washington, aggregating approximately seventy thousand acres, at such location or locations as may have been or may be hereafter from time to time selected or approved by the Secretary of War (of the due making of which selection the determination of the county commissioners of such county shall be conclusive) and convey all of such lands to the United States, to be used by the United States for any or all such military purposes, including supply stations, the mobilization, disciplining, and
138 training of the United States Army, State militia, and other military organizations as are now or may be hereafter authorized or provided by or under Federal law, said indebtedness to be evidenced by negotiable bonds of Pierce County, payable in not more than twenty years, with interest not exceeding five per centum per annum payable annually.

SEC. 3. Said bonds shall be in denominations of not less than one hundred nor more than one thousand dollars. They shall bear the date of issue, shall be made payable to the bearer in not more twenty years from date of issue, and bear interest at a rate not to exceed five per centum per annum, payable annually with coupons attached for each interest payment. The bonds shall be signed by the chairman of the board of county commissioners and be attested by the clerk of such board, and the seal of such board shall be affixed to each bond. The coupons shall bear the lithographed signature of the chairman and clerk of the board, but need not be impressed with the seal. Such bonds shall be printed, engraved, or lithographed on good bond paper, and the bond shall state on its face that it is issued in compliance with the laws of the State of Washington. Such bonds shall be payable in any city containing a bank organized under the laws of the United States, and may be sold by the county commissioners at not less than their par value, and their proceeds shall be applied only to the purposes for which such bonds were issued.

SEC. 4. The county commissioners of Pierce County, as an arm and agency of the State, are hereby required to levy annually a tax sufficient to pay and retire the interest coupons of such bonds as they become due, and ten years before such bonds shall become due the county commissioners of Pierce County, as an arm and agency of the State, are hereby required annually to levy a tax sufficient to liquidate such bonds at maturity. Such taxes shall be levied and collected as general county taxes are levied and collected, but
139 the proceeds of such taxes shall be kept in a separate fund for the sole purpose of liquidating such bonds and interest coupons in accordance with the provisions of the following sections.

SEC. 5. It shall be the duty of the treasurer of Pierce County, whenever he has on hand in such fund two thousand dollars, exclusive of interest requirements, to advertise for three consecutive issues in the newspaper then doing the county printing, for the presentation to him for payment of as many of such bonds as he may be able to pay with the funds in his hands, to be paid in numerical order of such bonds, beginning with bond numbered one, until all such bonds are paid: Provided, That thirty days after the first publication of such notice of the treasurer calling in any of such bonds by their number, such bonds shall cease to bear interest, which shall be stated in the notice.

SEC. 6. When any coupon is, by its terms, payable and is presented to the place where, by its terms, it is payable and is not paid for want of funds it may be then presented to the treasurer of Pierce County, and it shall be his duty to endorse the same as presented in the same manner as county warrants are endorsed, and thereafter such coupons shall bear interest at the rate of six per centum per annum until paid, or interest is stopped after call for payment as county warrants are called for payment. The money in such fund shall be first applied to the payment of accrued interest.

SEC. 7. Before such bonds are delivered to the purchaser they shall be presented to the county treasurer, who shall register them in a book kept for that purpose and known as the "bond register," in which register he shall enter the number of each bond, the date of its issue, maturity, amount, rate of interest, when and where payable, and shall endorse on each bond a certificate that it had been registered as required by law.

140 SEC. 8. The right of eminent domain is hereby extended to Pierce County as the agent of the state for every purpose of condemnation, appropriation, or disposition intended by this act, and such county is hereby authorized and empowered, as such state agent, to condemn and appropriate all lands and rights whatsoever, whether now or hereafter devoted to other public use, including lands belonging to the State or any of its governmental agencies or public corporations, held either in its or their proprietary capacity, and whether already segregated from the public domain and appropriated to other public use or not, all under the procedure hereinafter provided: Provided, That it shall be discretionary with Pierce County, as petitioner, to join as respondents all parties in one proceeding or in one or more proceedings as may be determined by its board of county commissioners or attorney for the county, and where the State is a party respondent it may be joined with the other respondents or proceeded against separately all in the superior court of Pierce County: And provided further, That the determination of the commissioners of such county that the Secretary of War has selected the lands described in the petition or petitions shall be conclusive that public necessity requires their condemnation and appropriation for such military site.

SEC. 9. In proceeding to appropriate the land, real estate, and premises herein provided for, Pierce County, through its board of county commissioners, shall present to the Superior Court a petition in which the land, real estate, premises, or other property sought to be appropriated shall be described with reasonable certainty, and setting forth the name of each and every owner, encumbrancer, or other person or party interested in the same or in possession thereof, or any part thereof, so far as the same can be ascertained from the public records, the object for which the land is sought to be
141 appropriated, and praying that a jury be impaneled to ascertain and determine the compensation to be made in money, irrespective of any benefit from such improvement, to such owner or owners, respectively, and to all tenants, encumbrancers, and others interested, for the taking or injuriously affecting such lands, real estate, premises, or other property, or in a case a jury be waived, as in other civil cases in courts of record in the manner prescribed by law, then that the compensation to be made, as aforesaid, be ascertained and determined by the court or judge thereof.

SEC. 10. A notice, stating britfly the objects of the petition, and containing a description of the land, real estate, premises, or property sought to be appropriated, and stating the time and place when and where the same will be presented to the court, or the judge thereof, shall be served on each and every person named therein as owner, encumbrancer, tenant, or otherwise interested therein, at least ten days previous to the time designated in such notice for the presentation of such petition. Such service shall be made by delivering a copy of such notice to each of the persons or parties so named therein, if a resident of the State; or in case of the absence of such person or party from his or her usual place of abode, by leaving a copy of such notice at his or her usual place of abode with some person of suitable age and discretion then resident therein; or in case of a foreign corporation, or nonresident joint-stock company or association doing business within this State, to any agent, cashier, secretary, or employe thereof. In case of domestic corporations, such service may be made upon the president, secretary, managing agent, director, or trustee of such corporation, and in the event the name and residence of any such officer cannot be ascertained, which fact may be shown by the affidavit of the attorney for the county, such service may be made upon the secretary of state and such service shall be deemed a good and sufficient service upon such corporation. In case of minors on their guardians, or in case no guardian shall have been appointed, then on the person who has the care and custody of such minor. In case of idiots, lunatics, or persons
142 laboring under legal disability, on their guardian; or in case no guardian shall have been appointed, then on the person in whose care or charge they are found. The court shall appoint a guardian ad litem for such infant, insane person, or persons under disability, to appear and defend for him, her, or them, and the court shall make such order or decree as it shall deem proper to protect

and secure the interest of such infant or insane person or person under disability, in the particular property that is to be taken or damaged, or the compensation which shall be awarded therefor. In case the land, real estate, premises, or other property sought to be appropriated is property of a city, town, school district, or other municipal or public corporation, the said notice shall be served on the clerk of said city, town, school district, municipal or public corporation, and if there is no such clerk, then upon the officer performing the duties pertaining to such clerk. In all cases when the owner or party claiming an interest in such real or other property is a nonresident of this State, or where the residence of such owner or party is unknown, and an affidavit of the attorney for the county shall be filed stating that he believes such owner or party is a nonresident of this State, or that, after diligent inquiry, the residence of such owner or party is unknown, or can not be ascertained by such affiant, service may be made by publication thereof in the official newspaper of the county once a week for two successive weeks; in case the owners or claimants to any property described in the petition are unknown, it shall be sufficient to designate them as "all other persons unknown claiming any right, title, lien, or interest in or to the property described herein," and service may be made on such owners or claimants as upon nonresidents; such publication shall be deemed service upon each of such owners or claimants unknown or whose residence is unknown. Such notice shall be signed by the attorney for the county. Such notice may be served by any competent person over twenty-one years of age. Due proof of service of such notice, by affidavit of the person serving the same, or by the printer's affidavit of publication, shall be filed with the clerk of such Superior Court before or at the time of the presentation
143 of such petition. All persons or parties having been served with notice as herein provided, either by publication or otherwise, shall be bound by the subsequent proceedings. In all cases not herein provided for, service of notices, orders, and other papers in the proceedings authorized by this act may be made as the Superior Court, or the judge thereof, may direct, or as may be provided by law for service of summons and process in civil actions.

SEC. 11. In all condemnation proceedings brought for the purpose of appropriating any land owned by the State or in which it has an interest, service of notice shall be made upon the commissioner of public lands.

SEC. 12. The court or judge may, upon application of the petitioner or of any owner or party interested, for reasonable cause, adjourn the proceedings from time to time, and may order new or further notice to be given to any party whose interest may be affected.

SEC. 13. At the time and place appointed for hearing said petition, or to which the same may have been adjourned, if the court or judge thereof shall have satisfactory proof that all parties interested in the land, real estate, premises, or other property described in said

petition have been duly served with notice as above prescribed, and shall be further satisfied by competent proof that the contemplated use for which the land, real estate, premises, or other property sought to be appropriated is really a public use, the court or judge thereof may make an order impaneling a jury. Such jury may be the same jury summoned for the trial of ordinary civil actions before the court, or the court may, in its discretion, issue a venire to the sheriff to summon as jurors such number of qualified persons as the court shall deem sufficient.

SECTION 14. A judge of the Superior Court shall preside at the trial, which shall be held at such time as the court, or the judge thereof, may direct, at the courthouse in Pierce County, and
144 the jurors at such trial shall make in each case a separate assessment of damages which shall result to any person, corporation, or company, or to the State, or to any municipal or public corporation or other party, by reason of the appropriation and use of such land, real estate, premises, or other property by such county as aforesaid, and shall ascertain, determine, and award the amount of damages to be paid to said owner or owners respectively, and to all tenants, encumbrancers, and others interested, for the taking or injuriously affecting such land, real estate, premises, or other property, irrespective of any benefit from any improvement proposed by such county. Upon the trial, witnesses may be examined in behalf of either party to the proceedings, as in civil actions. Judgment shall be entered by the court, and not by the clerk, for the amount of the damages awarded to such owner or owners respectively, and to all tenants, encumbrancers, and others interested, for the taking or injuriously affecting such land, real estate, premises, or other property. In case a jury is waived as in other civil actions in courts of record in the manner prescribed by law, the compensation to be paid for the property sought to be appropriated shall be ascertained and determined by the court, or the judge thereof, and the proceedings shall be the same as in trials of an issue of fact by the court. No judgment shall be final until signed by the court and filed with the clerk.

SEC. 15. Any final judgment or judgments rendered by said court upon any finding or findings of any jury or juries, or upon any finding or findings of the court in case a jury be waived, shall be lawful and sufficient condemnation of the land or property to be taken, or of the right to damage the same in the manner proposed, upon the payment of the amount of such findings and all costs which shall be taxed as in other civil cases: Provided, That in case any respondent recovers no damages, no costs shall be taxed. Such judgment or judgments shall be final and conclusive unless appealed from, and
145 no appeal from the same shall delay the proceedings, nor deprive the county of the right to possession of the property condemned, if such county shall pay into court for the owners and parties interested, as directed by the court, the amount of the judgment and costs, and such county, after making such payment into court, shall be liable to such owner or owners or parties interested

for the payment of any further compensation which may at any time be finally awarded to such parties so appealing in said proceeding, and his or her costs, and shall pay the same on the rendition of judgment therefor, and abide any rule or order of the court in relation to the matter in controversy. In case of an appeal to the supreme court of the State by any party to the proceedings the money so paid into the Superior Court shall remain in the custody of said Superior Court until the final determination of the proceedings. If any party entitled to appeal accepts the sum awarded by the jury or the court, he shall be deemed thereby to have waived an appeal to the supreme court.

SEC. 16. The court, upon proof that just compensation so found by the jury, or by the court in case the jury is waived, together with costs, has been paid to the person entitled thereto, or has been paid into court, shall enter an order that Pierce County shall have the right at any time thereafter to take immediate possession of or damage the property in respect to which such compensation shall have been so paid, and thereupon the legal title to any property so taken shall be vested in fee simple in Pierce County and a certified copy of such judgment or decree of appropriation and order shall be filed for record in the office of the county auditor of Pierce County and shall be recorded by said auditor like a deed to real estate and with like effect. If the title to said land, real estate, premises, or other property attempted to be acquired is found to be defective from any cause, Pierce County shall again institute proceedings to acquire the same as in this act provided.

SEC. 17. At any time within six months from the date of rendition of the last judgment awarding compensation in the Superior Court of land taken or damaged, selected by the Secretary of
146 War, as provided in this act, or if any appeal be taken, then within two months after the final determination of the appeal in the Supreme Court, such county may dismiss the proceedings as to any tract or parcel of land described in any petition or petitions filed in accordance with this act, by resolution of its board of county commissioners before making payment, by paying or depositing in court all taxable costs incurred by any parties interested in the particular tract or tracts up to the time of discontinuance.

SEC. 18. Whenever claim is made to any money paid into court, as provided in this act, the claimant may apply to the court therefor, and upon furnishing evidence satisfactory to the court that he or it is entitled to the same, the court shall make an order directing payment to such claimant of the portion of such money he or it shall be found entitled to, after first deducting the amount found to be due against the particular tract of land for all taxes and assessments as shown by the records in the office of the county treasurer and county assessor; but if, upon application, the court, or judge thereof, shall decide that there are conflicting claims to the award, he may proceed to hear and determine the same.

SEC. 19. Except as herein otherwise provided, the practice and procedure under this act in the Superior Court and in relation to the taking of appeals and the prosecution thereof, shall be the same as in other civil actions, but all appeals must be taken within thirty days from the date of filing the judgment appealed from: Provided, That in case of appeal no bond shall be required of the county.

SEC. 20. Pursuant to the Constitution and laws of the United States, and especially to paragraph seventeen of section 8 of article one of such Constitution, the consent of the Legislature of the State of Washington, is hereby given to the United States to acquire, by donation from Pierce County, title to all lands herein intended to be referred to, to be evidenced by the deed or deeds of Pierce
147 County signed by the chairman of its board of county commissioners and attested by the clerk of such board under the seal of such board, and the consent of the State of Washington is hereby given to the exercise by the Congress of the United States of exclusive legislation in all cases whatsoever over such tracts or parcels of land so conveyed to it: Provided, Upon such conveyance being concluded a sufficient description by metes and bounds and an accurate plat or map of each tract or parcel of land be filed in the auditor's office of Pierce County, together with copies of the orders, deeds, patents, or other evidences in writing of the title of the United States: And provided, That all civil process issued from the courts of this State and such criminal process as may issue under the authority of this State against any person charged with crime in cases arising outside of said reservation may be served and executed thereon in the same mode and manner and by the same officers as if the consent herein given had not been made.

SEC. 21. Owing to lack of proper and adequate military training and preparedness, the public peace and safety are and will continue to be endangered, an emergency exists, and this act is enacted for the support of the Federal and State Governments, as well as under the police power of the State, declared to be and is necessary for the immediate preservation of the public peace and safety, and shall take effect immediately.

Passed the senate January 25, 1917.

Passed the house January 25, 1917.

Approved by the governor January 27, 1917.

148 *Defendant's Exhibit B.*

Deed, with map, from Pierce County, Washington, to United States of America, conveying land for the military uses of the United States, including the permanent mobilization, training, and supply station for the Puget Sound area.

STATE OF WASHINGTON,
County of Pierce, ss. 542380

I hereby certify that the within instrument was deposited and received for record in the office of the county auditor of Pierce County,

Washington, on the 15th day of November, A. D. 1919, at 50 minutes past 3 o'clock in the afternoon of said day, and that the deed was recorded in volume 436 on page 120 of the deed records of said county, and that the map attached thereto, marked "Exhibit A," was recorded in volume 436 on page 134 of the deed records of said county.

Witness my hand and official seal this 15th day of November, A. D. 1919.

[SEAL.] C. A. CAMPBELL,
County Auditor in and for Pierce County, State of Washington.

Compared by M. & G.

Deed.

Know all men by these presents that—

Whereas, by act of Congress approved August 29, 1916, authority was granted to the Secretary of War to accept on behalf of the United States such tract or tracts of land suitable and desirable in his judgment for permanent mobilization, training, and supply stations; and

Whereas, after due investigation by the War Department, an area in Pierce County adjacent to the city of Tacoma, in the State of Washington, was selected by the Secretary of War as suitable and desirable for a permanent mobilization, training, and supply station for the Puget Sound area; and

Whereas, after conference with citizens of said Pierce County
149 a proposition was presented by the Secretary of War in the form of a letter dated December 2, 1916, wherein it was proposed that in the event Pierce County should donate to the United States a certain tract of lands designated on a map attached to said letter, the Secretary of War would accept the same for the purpose of maintaining thereon a permanent mobilization, training, and supply station, and, further, that as soon as and as long as the appropriations made by Congress and the military demands upon the mobile forces of the United States would permit, he would establish and maintain upon said reservation a division of mobile troops with such improvements as are provided for in said appropriations; and

Whereas the electors of said Pierce County did, at a special election held on the 6th day of January, A. D. 1917, authorize and direct the incurring of an indebtedness of two million dollars upon the property subject to taxation in said county, for the purpose of acquiring land for such purposes; and

Whereas the Legislature of the State of Washington, by the passage of chapter 3, Laws of 1917, approved January 27, 1917, did authorize and provide for the acquisition of lands selected or to be selected by the Secretary of War for the purposes above named and for any or all such military purposes as were then or

might thereafter be authorized, or provided by or under Federal law; and

Whereas after Pierce County had in due course proceeded with the acquisition of said lands, the Congress of the United States did declare that a state of war existed between the United States of America and the Imperial German Government; and

Whereas by virtue of an act of Congress approved July 2, 1917, and amended April 11, 1918, further authorizing the Secretary of War to accept donations of lands for military training camps and certain other military purposes, it was also provided that when such lands were acquired during the period of the existing emergency, or during war or the imminence thereof, section 355 of the Revised Statutes requiring the prior approval of title by the Attorney General be suspended; and

150 Whereas the Secretary of War did select the tract of land hereinafter described as a site for a military training camp for the mobilization and training of the military forces of the United States, which military training camp was subsequently named Camp Lewis; and

Whereas during the existing emergency approximately nine million dollars has been expended by the United States for buildings and improvements thereon and more than one hundred twenty-four thousand men have received military training at said camp; and

Whereas the occupation of said military training camp for said purposes made it advisable and necessary for Pierce County to obtain at the request of the Secretary of War additional and more expensive lands not covered by the original agreement of December 2, 1916, which resulted in modifications and changes in the boundaries of the area contemplated by the agreement of December 2, 1916, as evidenced by letters of the Secretary of War dated July 15, 1918, and July 8, 1919, to the effect that the tract of land as finally selected and accepted is that hereinafter described instead of that set forth on the map attached to the said letter of December 2, 1916; and

Whereas title to the said lands hereinafter described has now been acquired by Pierce County, in accordance with the law authorizing same and in a manner and to the extent acceptable to the Secretary of War:

Now, therefore, in consideration of the premises and in full compliance with said agreement of December 2, 1916, as modified from time to time and in conformity with chapter 3, Laws of Washington, approved January 27, 1917, Pierce County, a duly organized and existing county of the State of Washington, acting as an arm and agency of the State, does by these presents convey unto the United States of America, free of cost to the said United States, the following-described lands situated in Pierce County, State of Washington, to wit:

Beginning at a point on the south line of section 20, township 19 north, range 2 east, 264 feet west of the south quar-

151 ter corner of said section 20; thence north 64 degrees east 101.6 feet; thence north 25 degrees east 204.6 feet; thence north 82 degrees east 158 feet; thence north 54 degrees east 145.2 feet; thence north 41 degrees east 132 feet; thence north 52 degrees east 165 feet to a point on the meander line of American Lake, said point being 538.51 feet north of and 404.36 feet east of the south quarter corner of said section 20; thence in a northeasterly direction across the bed of American Lake to intersect the east and west center line of said section 20 at a point 1,700 feet west of the east quarter corner of said section 20; thence east 850 feet on said east and west center line; thence in a northeasterly direction to the northeast corner of said section 20; thence continuing in a northeasterly direction to a point 712.81 feet south of and 1,324 feet east of the northwest corner of section 16, township 19 north, range 2 east; thence west 1,324 feet to intersect the west line of said section 16; thence north 712.81 feet to the northwest corner of section 16; thence continuing north on the east line of section 8, township 19 north, range 2 east, to the east quarter corner of said section 8; thence west on the east and west center line of said section 8, 1,984.98 feet, more or less, to the southeast corner of the west half of the southwest quarter of the northeast quarter; thence north along the east line of said west half of the southwest quarter of the northeast quarter, 1,325.2 feet, more or less, to the northeast corner of said west half of the southwest quarter of the northeast quarter; thence west to intersect the north and south center line of said section 8; thence north on the north and south center line of said section 8 to the north quarter corner of said section 8; thence west along the north boundary of said section 8 to the northwest corner of said section 8; thence north along the east boundary line of section 6, township 19 north, range 2 east, 1,257.96 feet; thence west parallel with the south boundary line of said section 6, 828.96 feet to the east boundary line of the John Walker donation land claim No. 40; thence north along
152 said east line of said donation land claim to the northeast corner thereof; thence west along the north boundary line of said claim 2,547.6 feet to the northwest corner of said claim, also being a point in the east boundary line of the J. M. Chapman donation land claim No. 38; thence south along the east boundary of said claim 854.8 feet to the southeast corner of said claim, being also the corporate limits of the town of Steilacoom; thence west along the south boundary line of said Chapman claim, also being the north boundary line of railroad addition to Steilacoom and its prolongation, also the south boundary line of the West Shore Land Company's Second Addition, a distance of 3,168.26 feet to a

monument, being the northeast corner of block 25 of the Steilacoom tide lands of the first class, also being a point on the meander line of Puget Sound; thence in a southerly direction along the meander line of Puget Sound to intersect the north and south center line of section 14, township 19 north, range 1 east; thence south along the north and south center line of said section 14 to the southeast corner of lot 3; thence west to the southwest corner of said lot 3; thence south along the west one-sixteenth line of said section 14, township 19 north, range 1 east, to the south line of said section 14; thence east on the south boundary line of sections 14 and 13, township 19 north, range 1 east, to the northeast corner of the northwest quarter of the northwest quarter of section 24, township 19 north, range 1 east; thence south along the east boundary line of said northwest quarter of northwest quarter of said section 24 to the southeast corner of the said northwest quarter of the northwest quarter of said section 24; thence east 651.5 feet to the northeast corner of the west half of the southeast quarter of the northwest quarter of section 24, township 19 north, range 1 east; thence south along the west line of the east half of the east half of the west half of sections 24 and 25, township 19 north, range 1 east, to the southwest corner of the northeast quarter of the northeast quarter of the
153 southwest quarter of said section 25; thence east 621 feet more or less to a point 30 feet west of the north and south center line of said section 25; thence south along a line 30 feet west of and parallel to the north and south center line of said section 25 a distance of 1,211.2 feet more or less; thence east 30 feet to intersect the north and south center line of said section 25; thence southeasterly for a distance of 266.4 feet on the arc of a circle whose center is 270 feet east of the last-described point; thence on a reverse curve to the right on a 330-foot radius a distance of 408.93 feet; thence on a reverse curve to the left on a 270-foot radius a distance of 245 feet to intersect the north and south center line of section 36, township 19 north, range 1 east, at a point 216 feet south of the quarter corner on the north side of section 36, township 19 north, range 1 east; thence south on said north and south center line of said section 36 to a concrete monument 379.52 feet north of the north boundary line of the right of way of the Northern Pacific Railway Company; thence south 89 degrees 58 minutes 30 seconds east 291.11 feet to a concrete monument; thence south 0 degrees 1 minute 30 seconds west to intersect the north boundary line of the right of way of the Northern Pacific Railway Company; thence south 70 degrees 14 minutes west along the north boundary line of said right of way of the Northern Pacific Railway Company to intersect the west boundary line of said section

36, township 19 north, range 1 east; thence north along the east boundary line of section 35, township 19 north, range 1 east, to intersect the north one-sixteenth line of said section 35; thence west along the north one-sixteenth line of sections 35 and 34, township 19 north, range 1 east, to intersect the north and south center line of said section 34, township 19 north, range 1 east; thence north to the quarter corner on the north side of said section 34; thence west to the northeast corner of the northwest quarter of the northwest quarter of said section 34; thence south one-half mile to the southeast corner of the southwest quarter of the northwest quarter
154 of said section 34; thence west one-quarter mile to the quarter corner on the west side of said section 34, township 19 north, range 1 east; thence south on the west boundary line of said section 34, township 19 north, range 1 east, and the west boundary line of section 3, township 19 north, range 1 east, to intersect the north boundary line of the right of way of the Northern Pacific Railway Company; thence in a southwesterly direction along the north boundary line of said right of way of the Northern Pacific Railway Company to intersect the north one-sixteenth line of section 4, township 18 north, range 1 east; thence west along said one-sixteenth line to the northwest corner of lot 3, said section 4; thence south on the west side of said lot 3 to its intersection with the south boundary line of the right of way of the Northern Pacific Railway Company; thence southwesterly along the south boundary line of the right of way of said railway to its intersection with the east line of the J. Myers donation land claim No. 39; thence south to the southeast corner of said claim; thence west 97.68 feet to the northeast corner of the J. A. Packard donation land claim; thence south along the east boundary line of said claim, also being the west boundary line of lots 8, 7, 3, and 4, section 9, township 18 north, range 1 east, to the center of the Nisqually River; thence up the center of said Nisqually River to its intersection with the township line common to townships 17 and 18 north, range 1 east; thence east on said township line to the southeast corner of the Nisqually Indian Reservation, said point being 940.3 feet west of the quarter corner on the south line of section 36, township 18 north, range 1 east, being also the southwest corner of the property owned by the State of Washington and known as the Nisqually Fish Hatchery; thence north 3 degrees east 240 feet; thence south 80 degrees east 190.3 feet; thence south 206.6 feet to the said township line at a point 200 feet east of the southeast corner of said Nisqually Indian Reservation; thence east on said township line to the southeast cor-
155 ner of the southwest quarter of the southeast quarter of section 36, township 18 north, range 1 east; thence north along the east one-sixteenth line to the northeast corner of

the southwest quarter of the southeast quarter of said section 36; thence east along the south one-sixteenth line of section 36, township 18 north, range 1 east and sections 31 and 32, township 18 north, range 2 east to the northeast corner of the southwest quarter of the southwest quarter of section 32, township 18 north, range 2 east; thence south one-quarter mile to said township line; thence east one-quarter mile to the quarter corner on the south side of section 32, township 18 north, range 2 east; thence north one-quarter mile to the northwest corner of the southwest quarter of the southeast quarter of section 32, township 18 north, range 2 east; thence east on the south one-sixteenth line of said section 32 to the east boundary line of said section 32, township 18 north, range 2 east; thence north along the east boundary line of said section 32 to a point 660 feet south of the northeast corner of said section 32; thence east to intersect the north and south center line of section 33, township 18 north, range 2 east at a point 667.15 feet south of the north quarter corner of said section 33; thence in a northeasterly direction to the northeast corner of the northwest quarter of the northeast quarter of said section 33; thence east along the north line of sections 33 and 34, township 18 north, range 2 east to intersect the west line of the right of way of the Northern Pacific Railway Company; thence northeasterly along the west line of said right of way of the Northern Pacific Railway Company to intersect a line 480 feet north of and parallel to the south line of section 27, township 18 north, range 2 east; thence east along said line 480 feet north of and parallel to the south line of said section 27 to a point 660 feet east of the north and south center line of said section 27; thence south 53 degrees 58 minutes east to the southeast corner of the southwest quarter of the southeast quarter of said section 27;
156 thence south 200 feet; thence east on a line 200 feet distant from and parallel to the north line of sections 34 and 35, township 18 north, range 2 east, to a point 511.23 feet west of the west one-sixteenth line of said section 35; thence south 311.23 feet; thence east 511.23 feet to intersect the west one-sixteenth line of said section 35; thence south along said west one-sixteenth line to intersect the east and west center line of said section 35; thence east along the said east and west center line to a point 30 feet west of the center of said section 35; thence north 30 feet; thence east on a line 30 feet north of and parallel to the east and west center line of said section 35 to a point 30 feet north of and 30 feet east of the quarter corner on the west line of section 36, township 18 north, range 2 east; thence south along a line 30 feet east of and parallel to the west line of said section 36 to a point 30 feet north of and 30 feet east of the southwest corner thereof; thence east on a line 30 feet north of and parallel to the south line of section

36, township 18 north, range 2 east, and sections 31 and 32, township 18 north, range 3 east, to its intersection with the west line of section 33, township 18 north, range 3 east; thence south 30 feet to the southwest corner of said section 33; thence east along the south line of said section 33 to a point 30 feet west of the southeast corner thereof; thence north on a line 30 feet west of and parallel to the east line of said section 33, township 18 north, range 3 east, to its intersection with the north one-sixteenth line of said section 33; thence west along said north one-sixteenth line to the southwest corner of the northeast quarter of the northeast quarter of said section 33; thence north to the northwest corner of said northeast quarter of the northeast quarter; thence west along the south line of sections 28 and 29, township 18 north, range 3 east, to a point 30 feet west of the southeast corner of said section 29; thence north on a line 30 feet west of and parallel to the east line of said section 29 to a point 760 feet south of the east and west center
157 line of said section 29; thence west 630 feet; thence north 660 feet; thence east 630 feet, more or less, to intersect the west line of the D. A. Rice county road; thence north and northeasterly along the west line of said D. A. Rice county road to intersect a line 60 feet north of and parallel to the north one-sixteenth line of section 28, township 18 north, range 3 east; thence east on a line 60 feet north of and parallel to the north one-sixteenth line of sections 28 and 27, township 18 north, range 3 east, to a point 60 feet east of the west line of said section 27, township 18 north range 3 east; thence south on a line 60 feet east of and parallel to the west line of said section 27 a distance of 214.5 feet; thence east across said section 27 to a point 163.08 feet south of the north one-sixteenth line of said section 27 and 60 feet west of the east line thereof; thence north on a line 60 feet west of and parallel to the east line of said section 27 a distance of 223.08 feet; thence east 60 feet to the said east line thereof; thence continuing east on a line 60 feet north of and parallel to the north one-sixteenth line of sections 26 and 25 to intersect the west line of the Mount Tacoma Canyon county road; thence in a northwesterly direction along the west line of said Mount Tacoma Canyon county road to intersect the south line of section 24, township 18 north, range 3 east; thence west along the south line of sections 24 and 23, township 18 north, range 3 east, to the south quarter corner of said section 23; thence north on the north and south center line of said section 23 to a point 300 feet south of a line running east and west, which if prolonged would intersect the west line of the Mount Tacoma Canyon county road at its intersection with the east line of said section 23; thence east to the east line of said section 23;

thence south to the south one-sixteenth line of section 24, township 18 north, range 3 east; thence east on said south one-sixteenth line to intersect the west line of the Mount Tacoma Canyon county road; thence northwesterly along the west line of the said county road to intersect the east line of section 23, township 18 north, range 3 east; thence west across said section 23 to the north and south center line of said section 23; thence north along the north and south center line of said section 23 to the north quarter corner thereof; thence east along the north line of said section 23 to intersect the west line of the Mount Tacoma Canyon county road; thence in a northwesterly direction along the west line of said county road to intersect the north and south center line of section 14, township 18 north, range 3 east; thence north along the said north and south center line of said section 14 to a point 30 feet south of the north quarter corner thereof; thence west on a line 30 feet south of and parallel to the north line of said section 14 to its intersection with the west line of the Mount Tacoma Canyon county road; thence northwesterly along the said west line of said county road to its intersection with the north line of said section 14; thence west along the said north line of said section 14 to the northwest corner thereof; north to the northeast corner of the south half of the southeast quarter of the southeast quarter of section 10, township 18 north, range 3 east; thence west to the northwest corner of the south half of the southeast quarter of the southeast quarter of said section 10; thence north to the northeast corner of the northwest quarter of the southeast quarter of said section 10; thence west to the center of said section 10; thence north along the north and south center line of said section 10 to intersect the west line of the Mount Tacoma Canyon county road; thence in a northwesterly direction along the west line of said county road to its intersection with the north line of said section 10; thence west along the north line of said section 10 to a point 30 feet east of the northwest corner thereof; thence south 30 feet; thence west on a line 30 feet south of and parallel to the north line of sections 10 and 9, township 18 north, range 3 east, to its intersection with the north and south center line of said section 9; thence north to the north quarter corner thereof; thence continuing north along the north and south center line of section 4, township 18 north, range 3 east, to intersect the north one-sixteenth line of said section 4; thence west along the said north one-sixteenth line to a point 16.5 feet east of the southwest corner of the east half of the east half of the northeast quarter of the northwest quarter of said section 4; thence north on a line 16.5 feet east of and parallel to the west line of said east half of the east half of the northeast quarter of the northwest

158

159

quarter to intersect the west line of the Mount Tacoma Canyon county road; thence northwesterly along the west line of said county road to a point 660 feet north of the south line of section 33, township 19 north, range 3 east; thence west 290 feet; thence north 305 feet; thence east 160 feet; thence south 25 feet; thence east 130 feet to intersect the west line of the Mount Tacoma Canyon county road, said county road being designated as Pacific Avenue in Howell's Addition; thence north along the west line of said Mount Tacoma Canyon county road to a point 30 feet south of the north line of said section 33, township 19 north, range 3 east; thence west on a line 30 feet south of and parallel to the north line of said section 33 to its intersection with the east line of section 32, township 19 north, range 3 east; thence south along the east line of said section 32 to the southeast corner of the north half of the southeast quarter of the northeast quarter of said section 32, township 19 north, range 3 east; thence west along the south line of the said north half of the southeast quarter of the northeast quarter to a point 655.5 feet east of the east one-sixteenth line of said section 32; thence in a northwesterly direction to the southeast corner of the northwest quarter of the northeast quarter of said section 32; thence west along the south line of said northwest quarter of the northeast quarter to a point 940 feet east of the southwest corner of said northwest quarter of the northeast quarter; thence north 45 degrees west 1,050 feet; thence north 280 feet to the southeast corner of the
160 school grounds of school district No. 25, Pierce County, State of Washington; thence northwesterly to intersect the north and south center line of said section 32 at a point 201 feet south of the north quarter corner thereof; thence north along the north and south center line of said section 32 to intersect the south line of the Wasmund County road; thence southwesterly along the south line of said county road to intersect a line 256 feet south of and parallel to the north line of said section 32; thence on a straight line in a southeasterly direction to a point 294 feet south of and 20 feet west of the north quarter corner of said section 32; thence south to intersect the south line of the northeast quarter of the northeast quarter of the northwest quarter of said section 32; thence west along the north line of the southeast quarter of the northeast quarter of the northwest quarter of said section 32 to a point 66 feet east of the northwest corner of said southeast quarter of the northeast quarter of the northwest quarter; thence south to intersect the north one-sixteenth line of said section 32 at a point 66 feet east of the southwest corner of the southeast quarter of the northeast quarter of the northwest quarter of said section 32; thence west 66 feet; thence south to the southwest corner of the southeast quarter of the northeast quarter of the south-

west quarter of said section 32; thence east on the south one-sixteenth line of said section 32 to a point 330 feet east of the north and south center line of said section 32; thence south to the south line of said section 32 at a point 330 feet east of the south quarter corner thereof; thence west along the south line of said section 32 to the south quarter corner thereof; thence south along the north and south center line of section 5, township 18 north, range 3 east, to a point 400 feet north of the south quarter corner of said section 5; thence west 320 feet; thence on a straight line in a northwesterly direction to a point on the west one-sixteenth line of said section 5, 430 feet south of the east and west center line of said section 5; thence north along the west one-sixteenth line of said section 5 to intersect the east and west center line of said section 5; thence west to the west
161 quarter corner of said section 5; thence north along the west line of said section 5 to the northwest corner thereof; thence north 12 degrees 45 minutes west 2,038.96 feet; thence north 650 feet more or less to intersect the east and west center line of section 31, township 19 north, range 3 east; thence west 110 feet; thence northeasterly along the west line of the Wasmund county road in sections 31 and 30, township 19 north, range 3 east, to its intersection with the east line of said section 30; thence continuing north along the east line of sections 30 and 19, township 19 north, range 3 east, to the northeast corner of section 19, township 19 north, range 3 east; thence west along the south line of section 18, township 19 north, range 3 east, to intersect the south line of the old Military Road; thence continuing northwesterly along the south line of said Military Road to its intersection with the west line of the Lakeview-Roy county road, said point being 30 feet more or less west of and 30 feet more or less south of the center of section 13, township 19 north, range 2 east; thence north along the west line of said Lakeview-Roy county road to intersect the north line of lot 2 of said section 13, township 19 north, range 2 east; thence west along the north line of lots 2 and 3 of said section 13 to intersect the west line of said section 13; thence west along the south line of the Military Road to intersect the east line of the Pacific Highway in section 14, township 19 north, range 2 east; thence continuing in a southwesterly direction along the east line of the Pacific Highway through sections 14, 15, 22, and 21, township 19 north, range 2 east, to intersect the south line of section 21, township 19 north, range 2 east; thence west along the south line of sections 21 and 20, township 19 north, range 2 east, to a point 264 feet west of the south quarter corner of said section 20, said last-named point being the point of beginning.

Also including blocks 25 to 38, both inclusive, of the Steilacoom tide lands of the first class.

Also including 16.89 chains of second-class tide lands lying in front of lot 2, section 14, township 19 north, range 1 east.

162 and extending from the meander corner on the north and south center line of section 14 to the southwesterly boundary of said block 38 of Steilacoom tide lands of the first class.

Also including the southeast quarter of the northeast quarter of section 22, township 19 north, range 1 east.

Excepting from the whole of the foregoing described area the following:

1.

Tract "A" as so designated on attached map, Exhibit A:

Beginning at the quarter corner on the south line of section 6, township 18 north, range 3 east; thence north on the north and south center line of said section 6 to intersect with the south one-sixteenth line of said section 6; thence east along said south one-sixteenth line to intersect with the west line of section 5, township 18 north, range 3 east; thence north to the southwest corner of the north half of the northwest quarter of the southwest quarter of said section 5; thence east along the south line of the north half of the northwest quarter of the southwest quarter to a point 330 feet west of the west one-sixteenth line of said section 5; thence on a straight line in a southeasterly direction to intersect the south line of said section 5 at a point 550 feet west of the south quarter corner of said section 5; thence on a straight line in a southeasterly direction to intersect the north and south center line of section 8, township 18 north, range 3 east, at a point 550 feet south of the north quarter corner thereof; thence south on the north and south center line of said section 8 to its intersection with the north boundary line of the right of way of the Chicago, Milwaukee & St. Paul Railroad; thence in a southwesterly direction along the north boundary line of the right of way of said railroad to its intersection with the south line of the north half of the north half of the southwest quarter of said section 8; thence west along said south line of the north half of the north half of the southwest quarter to intersect with the west line of said section 8, township 18 north, range 3 east; thence continuing west along the south line of the north half of the north half of the southeast quarter of section 7, township 18 north, range 3 east,

163 to intersect the north and south center line of said section 7; thence south on the north and south center line of said section 7 to intersect with the south one-sixteenth line of said section 7; thence west along the said south one-sixteenth line to its intersection with the east line of the Spanaway-Roy county road; thence in a northwesterly direction along the east line of said highway to a point 330 feet west of and 725 feet south of the northeast corner of lot 3, said section 7, township 18 north, range 3 east; thence north along a line 330 feet west of and parallel to the east boundary line of lots 3 and 2 of said section 7 to its intersection with the north one-sixteenth line of said section 7, also being the north boundary line of said lot 2; thence east along the said north one-sixteenth line to intersect with the north and south center line of said section

7; thence north on said north and south center line of said section 7, township 18 north, range 3 east, to the north quarter corner thereof, said last-named point being the point of beginning.

2.

Tract "B" as so designated on attached map, Exhibit A:

Beginning at the southeast corner of section 14, township 18 north, range 2 east; thence west along the south line of said section 14 a distance of 140 feet; thence north 10 degrees 52 minutes west 1,113.90 feet; thence north 9 degrees 34 minutes east 903 feet, more or less, to intersect the north line of the south half of the northeast quarter of the southeast quarter of said section 14; thence north 11 degrees 9 minutes east 672 feet more or less to intersect the east and west center line of said section 14; thence north 8 degrees 50 minutes east 455.85 feet more or less to intersect the west line of section 13, township 18 north, range 2 east; thence north along said west line to intersect the north one-sixteenth line of said section 13; thence east along the north one-sixteenth line of said section 13 to intersect the west one-sixteenth line of said section 13; thence north to the northwest corner of the south half of the northeast quarter of the northwest quarter; thence east to the northeast corner of said south half of the northeast quarter of the northwest quarter; thence
164 north to the northwest corner of the south half of the north half of the northwest quarter of the northeast quarter; thence east to the southeast corner of the north half of the north half of the northwest quarter of the northeast quarter; thence north on the east one-sixteenth line of sections 13 and 12, township 18 north, range 2 east, to a point 990 feet north of the south line of said section 12; thence east on a line 990 feet north of and parallel to the south lines of section 12, township 18 north, range 2 east, and section 7, township 18 north, range 3 east, to its intersection with the south line of the Spanaway-Roy county road; thence in a southeasterly direction along the south line of said highway to a point 330 feet east of the east line of lot 4, said section 7; thence south on a line 330 feet east of and parallel to the east line of said lot 4 to its intersection with the north line of section 18, township 18 north, range 3 east; thence east to the quarter corner on the north line of said section 18; thence south on the north and south center line of said section 18 to a point 165 feet south of the north one-sixteenth line of said section 18; thence west on a line 165 feet south of and parallel to said north one-sixteenth line to its intersection with the east line of lot 2 of said section 18; thence south 325 feet; thence west on a line 490 feet south of and parallel to the north one-sixteenth line of said section 18 to intersect the east line of section 13, township 18 north, range 2 east; thence south to the east quarter corner of said section 13; thence west on the east and west center line to the center of said section 13; thence south to the quarter corner on the south line of said section 13; thence west

along said south line of said section 13; township 18 north, range 2 east, to point of beginning.

3.

Tract "C" as so designated on attached map, Exhibit A:
Beginning at the quarter corner on the west line of section 24, township 18 north, range 2 east; thence east to a point 550 feet west of the center of said section 24; thence on a straight line in a northeasterly direction to intersect the north and south center line of said section 24, 650 feet north of the center of said section 24, said point being the intersection of the north and south center line of said section 24 with the south line of the Nord and Kandle county road; thence north to the northeast corner of the southeast quarter of the northwest quarter of said section 24; thence in a straight line in a northwesterly direction to intersect the west one-sixteenth line of said section 24 at a point 400 feet south of the north line of said section 24; thence west on a line 400 feet south of and parallel to the north line of sections 24 and 23, township 18 north, range 2 east, to intersect the west line of the east half of the northeast quarter of the northeast quarter of said section 23; thence south to the northeast corner of the south half of the southwest quarter of the northeast quarter of the northeast quarter of said section 23; thence west to the northwest corner of said south half of the southwest quarter of the northeast quarter of the northeast quarter of said section 23; thence south to the southeast corner of the northwest quarter of the northeast quarter of said section 23; thence west to a point 762 feet east of the southwest corner of the northwest quarter of the northeast quarter of said section 23; thence on a straight line in a southwesterly direction to intersect the north and south center line at a point 430 feet north of the center of the said section 23; thence south on said north and south center line to its intersection with the south one-sixteenth line of said section 23; thence east on said south one-sixteenth line to intersect the east one-sixteenth line of said section 23; thence north of said east one-sixteenth line to intersect the east and west center line of said section 23; thence east along said east and west center line of section 23 to the east quarter corner of said section 23, township 18 north, range 2 east, or point of beginning.

4.

Tract "D" as so designated on attached map, Exhibit A:
Beginning at the southwest corner of section 23, township 18 north, range 2 east; thence north along the west line of said section to a point 450 feet south of the northwest corner of the southwest quarter of the southwest quarter of said section 23; thence on a straight line in a northeasterly direction to intersect the south one-sixteenth line of said section at a point 250 feet east of the west line of said section 23; thence east to the northeast corner of the southwest quarter of the southwest quarter of said section

23; thence south along the west one-sixteenth line of sections 23 and 26, township 18 north, range 2 east, to intersect with the north one-sixteenth line of said section 26; thence west along said north one-sixteenth line to a point 330 feet east of the west line of said section 26; thence south on a line 330 feet east of and parallel to the west line of said section 26 to intersect the east and west center line of said section 26; thence west to the quarter corner on the east line of section 27, township 18 north, range 2 east; thence south along the said east line of said section 27 to a point 200 feet north of the southeast corner thereof; thence west along a line 200 feet north of and parallel to the south line of said section 27 a distance of 914.84 feet; thence north 53 degrees, 58 minutes west 1,588.04 feet; thence north 13 degrees, 49 minutes east 4,293.79 feet more or less to intersect the north line of said section 27; thence east along said north line 1,175.44 feet to the northeast corner of said section 27, township 18 north, range 2 east, or point of beginning.

5.

Tract " E " as so designated on attached cap, Exhibit A:

Beginning at the northwest corner of the C. Wren donation land claim No. 37 in section 19, township 18 north, range 3 east; thence east along the north boundary line of said claim to the northeast corner of said claim in section 20, township 18 north, range 3 east; thence south along the east line of said claim to the southwest corner of lot 3, said section 20; thence east along the south line of lots 3 and 4 to the southwest corner of lot 5, said section 20; thence north to the northwest corner of said lot 5; thence east along the north line of said lot 5 to its intersection with the west line of section 21, township 18 north, range 3 east; thence south along said west line of said section 21 to its intersection with the north boundary line of the Peter Wilson donation land claim No. 38; thence east along the north boundary line of said claim to the northeast corner of
167 said claim in section 21, township 18 north, range 3 east; thence south along the east line of said claim in sections 21 and 28, township 18 north, range 3 east, to a point 500 feet north of the north one-sixteenth line of said section 28; thence west 631.62 feet, more or less, to intersect the west line of said section 28; thence north along said west line to the northwest corner of said section 28; thence west along the north line of section 29, township 18 north, range 3 east, and continuing west along the north line of section 30, township 18 north, range 3 east, to a point 1,640.1 feet east of the west line of the C. Wren donation land claim No. 37 in said section 30; thence south 660 feet; thence west 1,640.1 feet to intersect the west line of said donation land claim at a point 1,958.88 feet north of the southwest corner of said claim in said section 30, township 18 north, range 3 east; thence south along said west line to the southeast corner of lot 5, said section 30; thence west along the south line of lots 5 and 1 to the southwest corner of lot 1, said section 30, township 18 north, range 3 east; thence continuing west along the north one-sixteenth

ne of section 25, township 18 north, range 2 east, to its intersection
ith the west line of said section 25; thence north along said west line
said section 25 to intersect the south boundary line of the right
way of the Chicago, Milwaukee & St. Paul Railroad (Gray's
arbor Branch); thence in a northeasterly direction along said
uth line of said railroad to intersect with the east and west cen-
r line of section 24, township 18 north, range 2 east; thence east
ong the east and west center line of said section to the quarter
rner on the east line of said section 24; thence continuing east on
e east and west center line of section 19, township 18 north, range
east, to the northwest corner of the C. Wren donation land claim
o. 37, said last-named point being the point of beginning.

6.

Tract "F" as so designated on attached map, Exhibit A:
Beginning at a point 378 feet north of the east and west center
ne of section 22, township 19 north, range 2 east, on a line 30 feet
west of and parallel to the west line of the W. N. Savage
s donation land claim; thence north on said line to a point
663.97 feet south of the north line of said section 22; thence east
feet; thence on a straight line in a northeasterly direction to a point
the north line of section 22, township 19 north, range 2 east,
791.90 feet east of the northwest corner of said section 22; thence
st along the north line of sections 22 and 23, township 19 north,
nge 2 east, to a point 1,906.2 feet east of the northwest corner of
id section 23, township 19 north, range 2 east; thence south on a
ne which if continued would intersect the east and west center line
f said section 23 at a point 1,926.63 feet east of the west quarter
ction corner, 385.05 feet more or less to the south line of county
ad; thence following the south line of said county road to a point
92.09 feet south of the north line of said section 23, and 804.66 feet
st of the west line of said section 23; thence south 630 feet; thence
st 330 feet; thence south 630 feet more or less to the north line of
unty road, said last named point being 1,141.47 feet more or less east
f the west line of said section 23; thence east 1,980 feet on the
rth line of said county road; thence south 692.54 feet more or less
intersect the east and west center line of said section 23 at a point
,128.28 feet east of the west quarter corner of said section 23; thence
est along the east and west center line of sections 23 and 22, town-
ip 19 north, range 2 east, to a point 1,004.39 feet east of the south-
est corner of the W. N. Savage donation land claim; thence north
30.88 feet on a line which if continued would intersect the north
oundary line of said W. N. Savage donation land claim at a point
47.45 feet east of the northwest corner thereof; thence west at right
ngle to last course 330 feet; thence south at right angle to last
ourse 630.20 feet more or less to the east and west center line of
ection 22, township 19 north, range 2 east; thence west on the east
nd west center line of said section 22,330 feet more or less to a
oint 344.39 feet east of the southwest corner of said W. N. Savage

donation land claim; thence north 378 feet on a line which if continued would intersect the north line of said donation land
169 claim at a point 287.45 feet east of the northwest corner thereof; thence west to point of beginning.

7.

Tract "G" as so designated on attached map, Exhibit A:

Beginning at a point on the north line of section 12, township 19 north, range 1 east, 310 feet west of the northeast corner thereof; thence west on the north line of said section 12 a distance of 550 feet; thence south 350 feet; thence east 550 feet; thence north 350 feet; to point of beginning, said above described tract being known as blocks 8 and 9 of the recorded plat of West Shore Addition to Tacoma.

8.

Tract "H" as so designated on attached map, Exhibit A:

The southwest quarter of the northwest quarter of section 13, township 19 north, range 1 east.

9.

The right of way of the Northern Pacific Railway Company for the lines known as the Point Defiance Line, the Dupont Line, and the Prairie Line, and the right of way of the Gray's Harbor Branch of the Chicago, Milwaukee and St. Paul Railroad Company, shown on attached map, Exhibit A.

10.

The tract of land one hundred feet wide, parallel and adjacent to the right of way of the Dupont Line of the Northern Pacific Railway Company, except as shown on accompanying map, Exhibit A, in sections 3 and 4, townships 18 north, range 1 east, said strip being used as a public highway and known and designated as the Pacific Highway, shown on attached map, Exihibit A.

11.

The strips of land which have been established as public highways as designated on Exhibit A by two dotted parallel lines, the roads to be known as the following:

Tacoma-Roy county road	100	feet	in	width.
Spanaway-Roy county road	60	"	"	"
Barnes county road	40	"	"	"
William Jones county road	40	"	"	"
170 Locke-Roy county road	60	"	"	"
Peterson county road	40	"	"	"
Shaver county road	40	"	"	"
Asberg county road	40	"	"	"
Montague-Chambers county road	40	"	"	"
Rice Kandle county road	60	"	"	"
American Lake Gardens county road	40	"	"	"

12.

The tract of land 60 feet wide in the northwest quarter of section 14, township 18 north, range 3 east, being used as a public highway and known and designated as the Mount Tacoma Canyon county road.

13.

The tract of land 60 feet wide in the north half of the northeast quarter of section 19, township 19 north, range 3 east, known and designated as the old Military Road.

14.

Such timber and wood as the former owners or their successors in interest shall cut and remove within two (2) years from the 1st day of October, A. D. 1918, on and from the lands described as follows, to wit:

The north half of lot 3; the north half of the south half of the northwest quarter; the southeast quarter of the southwest quarter of the northwest quarter; the south half of the northeast quarter; the north half of the southeast quarter, all being in section 2, township 18 north, range 2 east.

The southwest quarter; the north half of the southeast quarter; the southwest quarter of the southeast quarter; the north 10 acres of the southeast quarter of the southeast quarter; beginning 881.1 feet west of the southeast corner of the W. R. Downey donation land claim; thence north 1,460 feet; thence west 293.2 feet; thence south 1,460 feet; thence, east 293.7 feet to point of beginning, all being in section 12, township 18 north, range 2 east.

The north half of the north half of the northwest quarter of the northeast quarter; the north half of the northeast quarter of
171 the northwest quarter; the northwest quarter of the northwest quarter, all being in section 13, township 18 north, range 2 east.

The north half of the northeast quarter of the southeast quarter, except the following: Beginning at the east quarter corner; thence west 70 feet; thence south 11 degrees 9 minutes west 672 feet more or less to intersect the south line of the north half of the northeast quarter of the southeast quarter; thence east 200 feet more or less to intersect the east line of section 14, township 18 north, range 2 east; thence north to point of beginning, all being in section 14, township 18 north, range 2 east.

The southeast quarter of the southwest quarter; the south half of the southeast quarter, all being in section 23, township 18 north, range 2 east.

The southwest quarter of the northwest quarter; the west 22 acres of the southeast quarter of the northwest quarter; the west 22 acres of the northeast quarter of the southwest quarter; the northwest

quarter of the southwest quarter, except, beginning at the intersection of the north line of the Lyle Murray county road and the west line of section 25, township 18 north, range 2 east; thence north 660 feet; thence east 660 feet; thence south 660 feet more or less to the north line of the county road; thence westerly along said road 660 feet to point of beginning, all being in section 25, township 18 north, range 2 east.

That part of the northwest quarter of the southeast quarter, and the northeast quarter of the southwest quarter, and the southeast quarter of the southwest quarter lying and being north and west of the right of way of the Chicago, Milwaukee & St. Paul Railroad (Gray's Harbor Branch); the northeast quarter of the northwest quarter; the southeast quarter of the northwest quarter; the north half of the northeast quarter; the southwest quarter of the northeast quarter, all being in section 26, township 18 north, range 2 east.

Lot 4, section 4, township 18 north, range 3 east.

The northeast quarter; the south half of the southeast
172 quarter; the northwest quarter of the southeast quarter; also beginning at a point on the west line of the east half of the southwest quarter, 430 feet south of the northwest corner thereof; thence on a straight line in a southeasterly direction to a point 320 feet west of and 400 feet north of the south quarter corner; thence east 320 feet; thence south 400 feet to the south quarter corner; thence west along the south line of section 5, township 18 north, range 3 east, 550 feet; thence on a straight line in a northwesterly direction to a point on the west line of the east half of the southwest quarter, 50 feet north of the southwest corner of the northeast quarter of the southwest quarter; thence north to point of beginning, all being in section 5, township 18 north, range 3 east.

Lots 1, 2, and 3; the southeast quarter of the northwest quarter; the south half of the northeast quarter, all being in section 6, township 18 north, range 3 east.

The east half; the south half of the southwest quarter except that portion lying northwesterly of the right of way of the Chicago, Milwaukee & St. Paul Railroad (Gray's Harbor Branch), all being in section 8, township 18 north, range 3 east.

The east half of the northwest quarter; the northwest quarter of the southwest quarter; the northwest quarter of the southeast quarter; the southeast quarter of the southeast quarter, all being in section 9, township 18 north, range 3 east.

The south half of the southwest quarter; the southwest quarter of the southeast quarter, all being in section 10, township 18 north, range 3 east.

The west half of section 14, township 18 north, range 3 east.

The northwest quarter of the southwest quarter in section 15, township 18 north, range 3 east.

All of section 17, township 18 north, range 3 east, except the southwest quarter of the northeast quarter of the northeast quarter.

The southeast quarter of the northwest quarter, except the north 5 acres thereof; the northeast quarter of the southwest
173 quarter, all being in section 18, township 18 north, range 3 east.

The north half of section 19, township 18 north, range 3 east.

The northwest quarter of the southeast quarter of section 21, township 18 north, range 3 east.

The southwest quarter of the northeast quarter; the north half of the southeast quarter of the northeast quarter, all being in section 22, township 18 north, range 3 east.

The northwest quarter of section 23, township 18 north, range 3 east.

The north half of the northeast quarter of section 26, township 18 north, range 3 east.

The south half of the southeast quarter of section 14, township 19 north, range 2 east.

The east half of the northeast quarter; also beginning on the north line of section 23, township 19 north, range 2 east, at a point 123.21 feet east of the quarter section corner on the north side of said section 23; thence on a line, which if continued would intersect the east and west center line of said section 23 at a point 2,598.28 feet east of the quarter section corner on the west side of said section 23; thence south 31.56 feet to the true place of beginning; thence continuing on said line south 600 feet; thence east at angle to last course 330 feet; thence north at angle to last course 600 feet; thence west 330 feet to beginning; also beginning on the north line of section 23, township 19 north, range 2 east, at a point 453.21 feet east of the quarter section corner on the north side of said section 23; thence on a line which if continued would intersect the east and west center line of said section 23 at a point 3,128.28 feet east of the quarter section corner on the west side of said section 23; south 31.56 feet to the true place of beginning for this description; thence continuing on said line south 600 feet; thence east at right angle to last course 330 feet; thence north at right angle to last course 600 feet; thence
west 330 feet to the true place of beginning; also, beginning on
174 the north line of section 23, township 19 north, range 2 east, at a point 1,127.85 feet east of the northwest corner of said section 23; thence on a line which if continued would intersect the east and west center line of said section 23 at a point 1,148.28 feet east of the quarter section corner on the west side of said section 23, south 1,322.00 feet to the true place of beginning for this description; thence continuing on said line south 630 feet; thence east at right angle to said line 330 feet; thence north at right angle to last course 630 feet; thence west 330 feet to the true place of beginning.

The northeast quarter; the northwest quarter of the southeast quarter, all being in section 25, township 19 north, range 2 east.

All of section 36, township 19 north, range 2 east.

Beginning at the west quarter corner of section 31, township 19 north, range 3 east; thence east to the center line of said section

31; thence south to the south quarter post; thence west 5.50 chains; thence north 6.90 chains; thence west 14.50 chains; thence north to a point 14.00 chains south of the east and west center line of said section 31; thence west 14.50 chains to the west line of said section 31; thence north 14.00 chains to point of beginning; that part of the southeast quarter of the northeast quarter of the northeast quarter lying west of the county road; that part of the southeast quarter lying west of the Spanaway-Roy county road, all being in section 31, township 19 north, range 3 east.

The east half of the southeast quarter, except the north 15 acres thereof; the northeast quarter of the southeast quarter of the northwest quarter, all being in section 32, township 19 north, range 3 east.

The west half of the southwest quarter of the southwest quarter, section 33, township 19 north, range 3 east.

Beginning at the southwest corner of the northwest quarter of the southeast quarter of section 34, township 19 north, range 1 east; thence east on the south one-sixteenth line of said section 34 to intersect the north line of the right of way of the Northern Pacific Railway Company (Dupont Line); thence northeasterly along the north line of said right of way of the Northern Pacific Rail-
175 way Company to intersect the east line of section 35, township 19 north, range 1 east; thence north on the east line of said section 35 to intersect the north one-sixteenth line thereof; thence west along the north one-sixteenth line of sections 35 and 34, township 19 north, range 1 east, to intersect the north and south center line of said section 34; thence south along said north and south center line to the southwest corner of the northwest quarter of the southeast quarter of said section 34, township 19 north, range 1 east, said last-named point being the point of beginning.

All of such cutting and removing to be in accordance with the forestry laws of the State of Washington, and such rules and regulations as may be prescribed by the State forester of Washington.

15.

Such timber and wood as the former owners or their successors in interest shall cut and remove within five (5) years from the 1st day of August, A. D. 1919, on and from the lands described as follows, to wit:

The northeast quarter of the southeast quarter and the south half of the southeast quarter of section 4.

The east half and the southwest quarter of section 3.

Lots 3, 4, 7, and 8; the northeast quarter; the north half of the southeast quarter and the southeast quarter of the southeast quarter of section 9, except the right of way of the Northern Pacific Railway Company.

All that part of section 16 lying and being east of the Nisqually River.

All of section 2 except the east half of the northeast quarter.

Sections 10, 15, 11, 14, 1, 12, 13, and 24, all being in township 18 north, range 1 east.

All of section 16, township 18 north, range 3 east.

Beginning on the north line of section 23, township 19 north, range 2 east, at a point 1,906.2 feet east of the northwest corner of said section 23; thence south on a line which if continued would intersect the east and west center line of said section 23 at a point 1,926.63 feet east of the west quarter section corner, 385.05 feet more or less to the south line of county road; thence following the south line of said county road to a point 692.09 feet south of the north line, and 804.66 feet east of the west line of said section 23; thence south 630 feet; thence east 1,650 feet more or less to a point 2,458.06 feet east of the west line of said section 23; thence south 630 feet more or less to the north line of county road; thence east on north line of county road 330 feet; thence north 630 feet; thence east 330 feet; thence north 630 feet; thence west 330 feet more or less to intersect a line drawn from a point on the north line of said section 23, 123.21 feet east of the north quarter corner thereof to a point on the east and west center line of said section 23, 2,798.28 feet east of the west quarter corner thereof; thence north to intersect the north line of said section 23 at a point 123.21 feet east of the north quarter corner thereof; thence west on said north line to point of beginning.

Beginning at the southwest corner of the southeast quarter of the northeast quarter of section 23, township 19 north, range 2 east; thence north on the west line of said southeast quarter of the northeast quarter, 638.28 feet; thence west 808 feet; thence south 632.54 feet more or less to intersect the east and west center line of said section 23; thence east on said east and west center line to the point of beginning.

Beginning at a point on the west line of the northeast quarter of the northeast quarter of section 23, township 19 north, range 2 east 60 feet south of the north line of said section 23; thence south 89 degrees 29 minutes west 205.44 feet; thence south 600 feet; thence east 192.30 feet more or less to intersect the west line of the northeast quarter of the northeast quarter of said section 23; thence north on the west line of said northeast quarter of the northeast quarter to point of beginning.

Beginning at the intersection of the west line of the Mount Tahoma Canyon county road with the east line of section 23, township 18 north, range 3 east; thence west to intersect the north and south center line of said section 23; thence south 300 feet; thence east to intersect the east line of said section 23; thence north 300 feet more or less to point of beginning, all being in section 23, township 18 north, range 3 east.

All of section 7, township 19 north, range 2 east.

That portion of section 12, township 19 north, range 1 east, lying east of the right of way of the Northern Pacific Railway Company, Point Definance Line.

All of such cutting and removing to be in accordance with the forestry laws of the State of Washington and such rules and regulations as may be prescribed by the State forester of Washington.

This conveyance is made subject to the following reservations, viz:

1.

The right of the owners of tracts "A," "B," "C," and "D" as above described, and the area north of tract "A" in section 5 township 18 north, range 3 east, to enter upon the intervening lands conveyed by these presents for the purpose of constructing, repairing, and maintaining drainage ditches or tunnels across said intervening lands in such manner and at such times as will not interfere with the military uses of the United States.

2.

The right of Tacoma Gas Company to maintain, in accordance with the terms of the franchise heretofore granted to it by the board of county commissioners of said Pierce County on June 17, 1910, the gas main as now located leading from the city of Tacoma to the city of Olympia across the said military reservation and shown on said Exhibit A adjacent to the west side of American Lake and the Dupont Line of the Northern Pacific Railway Company.

3.

The right of the city of Tacoma to maintain, in accordance with the terms of the franchise granted to it by the board of county commissioners of said Pierce County on May 3, 1912, its Nisqually electric transmission and telephone lines as now located along the east line of sections 4, 9, 16, 21, 28, and 33, township 18 north, range 3 east, and shown on the said Exhibit A.

178 4.

The right of Washington State Historical Society to maintain and preserve the memorial monument as located in section 19, township 19 north, range 2 east, erected by said society to mark the place where Captain Wilkes and party celebrated July 4th in 1841.

5.

The right of Letitia Spence and Henry Spence, her husband and their heirs to keep up, maintain, and use the Ancient Indian Cemetery, situated in the southeast quarter of the southwest quarter of section 28, township 18 north, range 2 east, at such times as shall not conflict with the military uses of the United States.

The said Pierce County having acquired title to the lands above described by judgments of condemnation, certified copies of which

have been heretofore recorded in the office of the county auditor of Pierce County, more particularly designated by said auditor's office fee numbers as follows:

Nos. 498928, 498929, 525351, 506220, 506221, 506222, 507084, 507085, 508135, 509256, 509957, 510831, 510832, 514438, 514439, 514440, 514441, 514442, 514443, 533163, 534248, 534249, 534250, 534251, 534252, 534253, 534254, 534255, 536519, 536520, 536795, respectively, to which reference is made.

In addition to the hereinbefore-described tract, and as part of the same transaction, but specifically withholding consent to the exercise by the Congress of the United States of exclusive legislative jurisdiction over the hereinafter-described lands, said Pierce County does hereby grant unto the United States a perpetual easement for the military uses of the United States over and above the lands described as follows, to wit:

1.

The southwest quarter of the northwest quarter, section 13, township 19 north, range 1 east; lots 3 and 4, and the southwest quarter of the southwest quarter, section 14, township 19 north, range 1 east; lot 1, section 15, township 19 north, range 1 east; lots 1 and 2, secion 22, ownship 19 norh, range 1 east, said easement to be used, however, in such manner as not to destroy or impair the use of said lands for the mining and excavating of sand and gravel from said lands and the use of the water system thereon used in connection therewith.

179

2.

Blocks 8 and 9 and street between said blocks of the West Shore Addition to Tacoma, Washington, and a strip of land 30 feet in width, being 15 feet on each side of the center line described as follows, to wit:

Commencing at the intersection of the east boundary of section 1, township 19 north, range 1 east, with the north boundary of the W. H. Wallace donation land claim No. 38, said point being also the northwest corner of Railroad Addition to Steilacoom; thence north 89 degrees 28 minutes west along the north boundary of said W. H. Wallace donation land claim 357 feet for a point of beginning, said point being station 9+94.9 on right of way for pipe line as shown on S. P. Judson's plat and survey for said pipe line; thence south 3 degrees 35 minutes west 70.02 feet; thence south 9 degrees 25 minutes east 90.60 feet; thence south 14 degrees 05 minutes west 91.20 feet; thence south 15 degrees 05 minutes west 116.30 feet; thence south 56 degrees 20 minutes west 241 feet; thence south 82 degrees 35 minutes west 72.60 feet; thence south 36 degrees 35 minutes west 25 feet; thence south 40 degrees 25 minutes east 113.80 feet; thence south 21 degrees 05

minutes west 32.80 feet more or less to the south boundary of Alden Street in the West Shore Addition to Tacoma, according to the plat thereof in the engineer's office of said Pierce County, said easement to be used, however, in such manner as not to destroy or impair the use of the hereinbefore described property as a water system for the town of Steilacoom;

The said Pierce County having acquired the first of said easements by deed heretofore recorded in the office of the county auditor of Pierce County, more particularly designa-
180 ted by auditor's office fee number 528081, and the second of said easements having been acquired by said Pierce County by a judgment of condemnation, a certified copy of which has been heretofore recorded in the office of the county auditor of Pierce County, more particularly designated by said auditor's office fee number 498928.

A graphic description of all of said lands covered by this instrument being set out on a map hereto attached, marked "Exhibit A" and made part hereof.

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, to be used by the United States for any or all such military purposes, including supply stations, the mobilization, disciplining, and training of United States Army, State militia, and other military organizations as are now or may be hereafter authorized or provided by or under Federal law, subject, however, to the express condition that if the United States should ever cease to maintain the tract above described for the uses above named, title to the lands above described will revert to said Pierce County without further act by it to be performed.

In witness whereof this instrument is executed by the duly authorized officers of Pierce County, State of Washington, this 1st day of October, A. D. 1919.

[SEAL.]

PIERCE COUNTY.
By JAMES R. O'FARRELL,
Chairman of Board of County Commissioners of said Pierce County.
JAMES W. SLAYDEN,
THOMAS H. BELLINGHAM,
County Commissioners.

Attest:

C. A. CAMPBELL,
County Auditor and Ex Officio Clerk of the Board of County Commissioners of said Pierce County.

181 Approved:

J. T. S. LYLE,
Special Attorney and Official Representative of said Pierce County.

Approved and accepted on behalf of the United States of America.

NEWTON D. BAKER,
Secretary of War.

ATE OF WASHINGTON,
County of Pierce, ss:

I, C. A. Campbell, county auditor in and for Pierce County, State Washington, do hereby certify that on this 1st day of October, D. 1919, personally appeared before me James R. O'Farrell, to known to be one of the duly elected, qualified, and acting county mmissioners of said Pierce County and the duly elected, qualified, d acting chairman of the Board of County Commissioners of said erce County, and Thomas H. Bellingham and James W. Slayden me known to be with James R. O'Farrell the duly elected, qualified, d acting county commissioners of said Pierce County and who knowledged that James R. O'Farrell executed the foregoing in- rument as chairman of the Board of County Commissioners of said erce County, pursuant to the provisions of chapter 3, Laws of 17, and that they executed said deed for the uses, purposes therein med as the free act and deed of said Pierce County.

In witness hereof I have hereunto set my hand and official seal this day of October, A. D. 1919.

[SEAL.] C. A. CAMPBELL.

unty Auditor and Ex Officio Clerk of the Board of County Commissioners of Pierce County, State of Washington.

ATE OF WASHINGTON,
County of Pierce, ss:

I, George F. Murray, county clerk and ex officio clerk of Superior Court of the State of Washington, in and for Pierce County, 2 State of Washington, the same being a court of record, do hereby certify that C. A. Campbell, whose name is subscribed attesting the signatures of the County Commissioners of said erce County, and as to the official seal of said Pierce County and the certificate of the acknowledgment of the annexed instrument d therein written, was, at the time of such attestation and the tak- g of such acknowledgment, the duly elected, qualified, and acting unty auditor of said Pierce County, whose certificate of election d oath of office are on file in my office, as required by law, and was virtue of his office on said date the acting and qualified clerk of e Board of County Commissioners of said Pierce County, and was virtue of his office authorized to take the said acknowledgment; d, further, that I am well acquainted with the handwriting of id C. A. Campbell, and verily believe that the signature to the said testation and the said acknowledgment are genuine.

I certify, further, that M. L. Clifford, whose name is subscribed the certificate immediately succeeding this certificate, is a judge of e Superior Court of the State of Washington for Pierce County, ly elected, sworn, and qualified, and that the signature of said dge to said certificate is genuine.

In witness whereof I have hereunto set my hand and affixed the seal of said Superior Court, at Tacoma, the county seat of said county, this 1st day of October, A. D. 1919.

[SEAL.] GEORGE F. MURRAY,
County Clerk and Ex Officio Clerk of Said Superior Court.

STATE OF WASHINGTON,
County of Pierce, ss:

I, M. L. Clifford, one of the judges of the Superior Court of the State of Washington for Pierce County, do hereby certify that George F. Murray, whose name is subscribed to the preceding certificate, is the county clerk of said Pierce County and ex officio clerk of the Superior Court of the State of Washington for said county, and that full faith and credit are due to his official acts.

183 I further certify that the seal affixed to the said certificate is the seal of our said Superior Court, and that the attestation thereof is in due form and according to the form of attestation in this State.

Dated at Tacoma, the county seat of said county, this 1st day of October, A. D. 1919.

M. L. CLIFFORD,
Judge of Superior Court.

[Memo.—The map attached hereto in original exhibit is herewith omitted by agreement.]

Defendant's Exhibit C.

[Official copy.]

No. 2501552.

(Date) DEC. 15, 1916.

Furnished to the Judge Advocate General, December 2, 1916.

MR. STEPHEN C. APPLEBY,
Chairman, Pierce County Committee, Tacoma, Washington.

SIR: At the hearing conducted in my office at which were present Mr. Stephen C. M. Appleby, Mr. Frank S. Baker, Mr. Jesse O. Thomas, jr., and Mr. Elbert R. Baker (of Cleveland, Ohio), committee of citizens of Pierce County, Washington, and at which also appeared Major General Hugh L. Scott, Chief of Staff; Major General J. Franklin Bell, United States Army, commanding general, Western Department; and Captain John B. Murphy, Coast Artillery Corps, his aide de camp, there was discussed informally the proposition tentatively advanced to donate a tract of land to the United States as a site for a permanent mobilization, training, and supply station, at or near American Lake, in Pierce County, Washington. The essentials of the proposition are understood by me, in the light of the conference, to include the acquisition by

rce County by purchase or condemnation, for public purposes
he United States specified in title 171, section 21, Pierce's Wash-
on Code, Annotated, 1912, of a tract of land designated in
ow on the map accompanying the proposition bearing the
legend,

"Site for division cantonment and mobilization, and training camp, for Puget Sound area, prepared from county maps, Pierce County, Wash., in office department engineer, Western Department. Explanatory notes by Captain R. Park, C. E., accompanying."

he aggregate area of the tract embraced by the exterior limits and proposed to be donated is 140 square miles. Within this are certain holdings having an aggregate area of 31.8 miles, cated in pink and orange, which is not proposed to donate. The indicated in yellow included in the propostion has a net area 08.2 square miles, or approximately 70,000 acres. The committee rves the right to omit a portion of the area disignated in yellow g in the northerly part of the same, and to substitute an equiva- area lying to the east of the tract above described, this substitu- to be subject to the recommendation of the commanding general he Western Department and the approval of the Secretary of r.

am advised at the hearing that the site in question has been fully considered by the commanding general, Western Depart- t, with the advice of other military authorities, and that it is med suitable site for a permanent mobilization and supply sta- for the Puget Sound area, and suitable and sufficient for the ommodation of a division of mobile troops.

ou are further advised that if Pierce County tenders a deed veying a valid title to lands included in the exterior limits above ribed and subject to the substitutions above described, having ggregate area of approximately 70,000 acres, I will accept the e, for the purpose of maintaining thereon a permanent mobili- on, training, and supply station, under the authority of the act Congress approved August 29, 1916 (Public No. 242, 64th Con- ss), subject to the condition to be embodied in the conveyance in rdance with the proposition that if the United States should cease to maintain said tract as a site for a permanent mobiliza- , training, and supply station, title to the lands so donated to the United States will revert to the County of Pierce, State of Washington. It is understood that the title so conveyed to the United States must be approved by the Attorney General he United States, as required by section 355, Revised Statutes of United States.

ou are further advised that as soon as and as long as the appro- tions made by Congress and the military demands upon the ile forces of the United States permit, I will establish and main-

tain upon said reservation a division of mobile troops with such improvements as are provided for in said appropriations.

Very respectfully,

NEWTON D. BAKER,
Secretary of War.

Defendant's Exhibit D.

DECEMBER 6, 1916.

MR. STEPHEN C. M. APPLEBY, *Tacoma, Washington.*

MY DEAR MR. APPLEBY: Following up our recent conference in the matter of the establishment of a permanent cantonment and training camp for a division of troops at American Lake, and having reference also to my letter of December 2, 1916, upon the subject, I have the honor in connection therewith to advise you as follows relative to the condition of our statute law and to the practice of the War Department concerning the occupancy and use of military reservations by National Guard organizations, rifle clubs, business men's training camps, and other military or semimilitary organizations.

Prior to the passage of the national defense act of June 3, 1916, with the exception of the general leasing act of July 28, 1892 (27 Stat. 321), authorizing the Secretary of War to lease for periods not exceding five years and revocable at will at any time, such property of the United States under his control as might not for the time be required for public use, no direct statutory authority could be said to have existed for permitting the occupation and use of military reservation by other than military forces of the Federal Government. However, as these military reservations had either been set apart by Executive order from the public domain for
186 military purposes or acquired by purchase for such purposes, the view has uniformly been taken that the Secretary of War in their administration was authorized to permit of their use for military drill or training purposes by militia organizations, rifle clubs, boy scout organizations, or any other organizations which had for their object, or for one of their principal objects some feature of military drill or training. Under this view permits for such use and occupancy of military reservations, usually in the form of revocable licenses, have from time to time been granted to the said organizations and others of like character whenever such occupancy and use did not interfere or was not incompatible with their use by the troops of the Regular Army. These permits or licenses issued to these organizations have been liked [sic] upon as being directly in line with the purposes for which the reservations were acquired and are being maintained and as therefore within the intent of Congress concerning them.

This conception, however, of the authority of the Secretary of War to permit of the use and occupation of military reservations by organizations of a military or semimilitary character, but not

part of the Army, could not properly be extended to the buildings
rected for the use of the Army on the said reservations, nor has
been the practice to grant such permits for the use of these build-
ngs, except in some few cases of reservations no longer occupied
y troops, nor likely hereafter to be so occupied. The reasons for
his are clear. To begin with, the appropriations for these build-
ngs are based upon and made to meet the needs and requirements
f the Army, just as much so, in fact, as the appropriations for
ubsistence, clothing, and other supplies for the Army; and to per-
it of their use by organizations or individuals not a part of the
rmy would operate to defeat the purpose of Congress as expressed
n the appropriations. Furthermore, if such buildings, permitted to
e so used, should be damaged or destroyed by fire or by any other
neans because of such use, there would be no appropriation avail-
ble for their repair or replacement; nor could this condition be
remedied by the requirement of a bond to protect the Govern-
87 ment while the buildings were being so used, as under the
law any moneys that might be received therefrom would be
equired to be deposited in the general fund of the Treasury as
iscellaneous receipts, and could not be withdrawn or used to repair
r replace the buildings damaged or destroyed without a subsequent
ppropriation by Congress for the purpose.

Under the national defense act of June 3, 1916, above referred to,
he following specific provisions are made for the use of military
eservations by organizations and individuals not a part of the
ilitary establishment:

"SECTION 10. * * * Authority is hereby given to the Secretary
f War to grant permission, by revocable license, to the American
ational Red Cross to erect and maintain on any military reserva-
ions within the jurisdiction of the United States buildings suitable
or the storage of supplies, or to occupy for that purpose buildings
rected by the United States, under such regulations as the Secretary
f War may prescribe, such supplies to be available for the aid of the
ivilian population in case of serious national disaster."

"SECTION 48. The Secretary of War is hereby authorized to main-
ain camps for the further practical instruction of the members of
he Reserve Officers' Training Corps, no such camps to be maintained
or a period longer than six weeks in any one year, except in time of
ctual or threatened hostilities; to transport members of such corps
o and from such camps at the expense of the United States so far as
ppropriations will permit; to subsist them at the expense of the
nited States while traveling to and from such camps and while re-
aining therein so far as appropriation will permit; to use the Regu-
ar Army, such other military forces as Congress from time to time
uthorizes, and such Government property as he may deem necessary
or the military training of the members of such corps while in
ttendance at such camps; * * *."

"SECTION 94. Under such regulations as the President may
88 prescribe the Secretary of War is authorized to provide for

the participation of the whole or any part of the National Guard in encampment, maneuvers, or other exercises, including outdoor target practice, for field or coast defense instruction, either independently or in conjunction with any part of the Regular Army."

"SECTION 97. Under such regulations as the President may prescribe, the Secretary of War may provide camps for the instruction of officers and enlisted men of the National Guard. Such camps * * * may be located either within or without the State, Territory, or District of Columbia to which the members of the National Guard designated to attend said camps shall belong."

"SECTION 95. When any part of the National Guard participates in encampments, maneuvers, or other exercise including outdoor target practice, for field or coast defence instruction at a United States military post or reservation, or elsewhere * * *."

"SECTION 54. The Secretary of War is hereby authorized to maintain, upon military reservations or elsewhere, camps for the military instruction and training of such citizens as may be selected for such instruction and training, upon their application and under such terms of enlistment and regulations as may be prescribed by the Secretary of War."

"SECTION 113. The Secretary of War shall annually submit to Congress recommendations and estimates for the establishment and maintenance of indoor and outdoor rifle ranges, under such a comprehensive plan as will ultimately result in providing adequate facilities for rifle practice in all sections of the country. And that all ranges so established and all ranges which may have already been constructed, in whole or in part, with funds provided by Congress shall be open for use by those in any branch of the military or naval service of the United States and by all able-bodied males capable of bearing arms under reasonable regulations to be prescribed by the controlling authorities and approved by the Secretary of War.

189 That the President may detail capable officers and noncommissioned officers of the Regular Army and National Guard to duty at such ranges as instructors for the purpose of training the citizenry in the use of the military arm."

It is noted that under section 10 of the provisions above quoted authority is given to the Secretary of War to grant permission to the American National Red Cross to erect and maintain buildings on military reservations for the storage of supplies and to occupy for that purpose buildings erected by the Government thereon, and that under section 40 he is authorized to maintain camps for practical instruction of the members of the Reserve Officers' Training Corps and to use such Government property as he may deem necessary for the military training of the members of such corps while in attendance at such camps. These provisions would appear to be sufficient authority for permitting the use of buildings on military reservations for the purposes stated therein. No further provision, however, appears to be made in the said act that would authorize the use of such buildings by organizations not a part of the Army.

In general the above provisions of the national defense act are considered by the War Department as a definite expression of the intention on the part of Congress that the various military reservations in the country shall be available for use as far as practicable for military drill and training purposes by National Guard organizations either in conjunction with or independently of Federal troops, by the Reserve Officers' Training Corps, and by the American National Red Cross, by rifle clubs, and by such citizens, cadet, and scout organizations as have for their object or for one of their principal objects military drill or training in the use of arms. In other words, these provisions are regarded as a specific declaration of the policy of Congress in a matter with respect to which the War Department hitherto had been acting under more general authority but along the same lines as indicated therein.

This use, however, of the various military reservations, including the lands proposed to be acquired in the particular case under
190 consideration, by any of the above-named organizations must always yield and be subordinate to their use by the regular Military Establishment. This latter is the use for which they were primarily acquired and must be understood to be paramount at all times to any other use of these reservations.

Very truly yours,

NEWTON D. BAKER,
Secretary of War.

Defendant's Exhibit E.

[Copy.]

Equip 520

WAR DEPARTMENT,
Washington, July 8, 1916.

Mr. J. T. S. LYLE,
Special Attorney & Official Representative,
Pierce County, Washington.

SIR: I have had under consideration the matters set forth in your letters of March 11 and March 17, 1919, respectively. From these letters and the exchange of telegrams submitted it appears that Pierce County proceeded with the plan of condemning additional lands in the manner outlined in my letter of July 15, 1918. That as the suit progressed it became evidence that greater acreage of land of a higher military value could be secured by the elimination of certain highly improved swamp and bottom lands, and the matter having been referred to Major General J. D. Leitch, commanding officer, Camp Lewis, Washington, these eliminations were made after personal inspection by him and with his approval and that from time to time such additional changes were made so as to surround the area taken with natural boundaries such as paved highways and thickly wooded areas.

You also state that as a result of these changes that instead of fifty thousand acres, which it was estimated in your letter of August

27, 1918, was the amount which could be obtained for the $2,000,000.00 available, the amount actually secured is 62,423.122 acres. You call attention to the fact that in order to exhaust the fund it was necessary to condemn more land than was actually covered by the cash on hand at the time and also that in working out the
191 boundaries it so happened that in order to get all the tracts necessary to secure the best boundaries you found that after you have sold the improvements of nonmilitary value, secured with the land, and also the equipment, that there will still be approximately twenty thousand dollars required to pay for all the small tracts which would be desired to complete the project. These particular tracts are designated in green on the map accompanying your letter.

You also call attention to the discussion we had at Camp Lewis on March 16, 1919, relative to the acquiring of those lands situated in the north one-half, section 21, 23, township 19, range 2 east, which is crosshatched in purple on the map marked "Exhibit A" containing 350 acres, at an appraised value of $56,675.00. At that time I felt that if funds were available it might be desirable for the United States Government to expend this amount in acquiring the lands in order to avoid having private land holdings within that part of the military tract. I reserved decision on this question until I could ascertain whether funds were available for such purposes. Having made an investigation of the condition of our funds I regret to state that we have no funds available for the purpose and therefore that we will have to abandon, for the time being at least, any thought of acquiring these lands.

You call attention to the fact that with the lands which you have acquired you were compelled to pay for a large amount of standing timber, which cost approximately $175,000.00, which when cut into cord wood lengths would produce approximately 350,000 cords of wood. In connection therewith you submit two propositions:

First. That the Government, through its quartermaster department, purchase this timber for fuel purposes at a price which will equal the amount which will be necessary to cover the remainder of the judgments for the land colored in green after Pierce County has exhausted her resources, the amount in question being about twenty thousand dollars.

Second. That in case the first proposition is disapproved that Pierce County be permitted to sell so much of the above timber
192 as will be necessary to make up such deficiency. The land in such case will be deeded to the United States Government subject to the right of the purchaser of the timber to remove such timber within five years from August 1, 1919, under the forestry laws of the State of Washington and such rules and regulations as may be prescribed by the State forester of Washington.

After considering the matter in all of its phases, I have concluded to accept the second propositon and you may proceed accordingly.

You also call attention to the fact that in certain instances timber on some of the tracts was actually being cut and in other cases was

about to be cut by the owners and that as to those tracts the owners were allowed to keep such timber as they might cut and remove within two years from October 1, 1918, and that by this plan you saved approximately $75,000.00, which was used to buy additional lands of military value.

As a method of clearing up miscellaneous matters preparatory to tendering deed, you ask affirmative action on the following:

(a) That the original proposition as outlined in my letter of December 2, 1916, and as modified by my letter of July 15, 1918, be further modified by the approval of the acquisition of the additional lands as secured since July 15, 1918, and shown on the attached map, marked "Exhibit A," with explanatory notes thereto attached, and that this additional land together with the lands already approved in my letter of July 15, 1918, be deemed all the lands covered by my letter of December 2, 1916, subject to the right of Pierce County to eliminate such tracts of land colored in green on "Exhibit A" as can not be paid for.

(b) The formal approval of the plan of permitting the Board of County Commissioners of Pierce County to sell the improvements, using the funds at their disposal for acquiring lands and paying expenses.

(c) Authority to dismiss the condemnation suits as to all lands outside of the exterior boundaries as designated by the purple
193 lines and that part of the eliminated lands inside the purple lines and such part of the lands which is designated in green as Pierce County is finally unable to pay for.

(d) The formal approval of the plan of permitting the owners to keep, without pay, such timber on certain tracts, as they shall cut and remove within two years from October 1, 1918.

After considering the propositions as outlined above, I hereby accept the modifications of the original agreement as set forth under paragraphs (a), (b), (c), and (d) above.

Very respectfully,

NEWTON D. BAKER,
Secretary of War.

Defendant's Exhibit F.

Camp Lewis, land condemned for site for #2. Secretary's office, Jun. 14, 1919. War Department.

LAW OFFICES OF LYLE & HENDERSON,
TACOMA BUILDING,
Tacoma, Washington, July 10, 1919.

Subject: Permanent mobolization, training, and supply station for the Puget Sound area, American Lake, Washington.

Honorable NEWTON D. BAKER,
Secretary of War, Washington, D. C.

DEAR SIR: On June 27, 1918, I submitted the evidence of title to the land which had been acquired in the condemnation proceeding

known as Pierce County ex rel. Thomas H. Bellingham, James R. O'Farrell, and James W. Slayden, county commissioners of Pierce County, petitioners, versus John August Abrahamson et al., respondents, and requested that, in addition to passing upon the titles submitted, that you also approve the plan of obtaining title, for guidance in securing title to the remainder of the land desired. By letter of July 1, 1918 (J. A. G. 601, A. G. O. 601.1), you approved the titles submitted as above stated and likewise approved the method of acquiring title.

The proceedings for obtaining title to the balance of the lands covered by the project having been brought to conclusion on
194 the plan as approved, I now submit the evidence of title to such lands.

These titles were secured by two separate condemnation cases, viz: Pierce County ex rel. Thomas H. Bellingham, James R. O'Farrell, and James W. Slayden, county commissioners of Pierce County, petitioners, vs. Ashas et al., respondents, Docket No. 42385, commonly known as the Nisqually Indians' case; Pierce County ex rel. Thomas H. Bellingham, James R. O'Farrell, and James W. Slayden, county commissioners of Pierce County, petitioners, vs. Engelbret Aaberg et al., respondents, Docket No. 41654, usually referred to as the Aaberg case.

Because of the uncertainty as to just which particular tracts would be finally taken it was necessary when the Aaberg case petition was prepared in August, 1917, to include all lands within the region which had been under discussion at any time and which were not covered by the other proceedings. As a consequence the Aaberg case covered about forty-five thousand acres. The amount finally taken was approximately twenty-five thousand acres, leaving some eight hundred tracts which were not actually condemned. Because of the interior fractional eliminations, together with the broken exterior boundary of the whole area covered by the Aaberg case, a legal description of the lands actually taken would be unduly long and involved.

It so happens that as a part of our office system we designated each ownership by an arbitrary number which was thereafter carried as the record designation of each particular tract throughout the case. For convenience we platted each ownership on a map showing in each case the name of the owner and the arbitrary number.

I submit herewith a print of the map referred to, marked "Exhibit B," and have shown thereon the lands actually taken in both the Nisqually Indians and the Aaberg cases. The lands taken are divided into four classes and shown in colors as follows:

1. Brown: The lands taken in the Nisqually Indians' case.

2. Red: The lands taken in the Aaberg case without any reservation.

195 3. Yellow. The lands taken in the Aaberg case upon which the owners reserved such timber as they may cut and remove within two years from October 1, 1918.

4. Green: The lands taken in the Aaberg case which have not yet been paid for.

In connection with the latter we shall submit proof of payment at the time of tendering deed.

Since the arbitrary number appears at the bottom of each description in the judgments, I feel that the map will prove to be the easiest method of showing the lands described in the judgments submitted.

I herewith submit as evidences of title the following documents which, as agreed with regard to the Abrahamson case documents, are to be left as a part of the records of your office:

(1) Printed copies of notices served on all respondents.

(2) Exemplified copies of affidavits for publication of notices.

(3) Exemplified copies of published notices with proof of publication.

(4) Exemplified copies of judgments of public use and necessity and adjudging that all parties interested have been served with notices as required by law.

(5) Exemplified copies of (a) judgments on awards, (b) judgments vesting title in fee simple in Pierce County except as to those tracts colored in green.

In the two proceedings under consideration there were 771 separate tracts, varying in size from a twenty-five-foot lot to 1,200-acre farms, which represent 771 separate awards and more than 771 separate titles.

The documents and data covering these tracts fill three trunks. I likewise submit them for your consideration, but, in accordance with the plans approved at the time of the examination of the documents in the Abrahamson case, I shall ship them back to be filed in Tacoma.

When the title is approved we shall be ready to assemble the data preparatory to the execution of the deed. Since the legal description of the whole area will be long and complicated, I am
196 submitting a form of deed for your approval prior to the insertion of the description.

Respectfully submitted.

J. T. S. Lyle,
Special Attorney and Official Representative for Pierce County.

JTSL/b.

Rec'd Jul. 14, 1919. A. G. O.

86690—24——10

Defendant's Exhibit G.

ESB: SA (JAG-601). J. A. G. O. Jul-1, 1918.

JULY 15, 1918.

Mr. J. T. S. LYLE,
Special Attorney and Official Representative,
Pierce County, Washington.

SIR: In a letter dated June 21, 1918, you have called my attention to the proposition contained in my letter of December 2, 1916, addressed to Stephen C. M. Appleby as chairman of a committee of citizens, Pierce County, Washington, relative to the tract of land which Pierce County proposed to donate to the United States as a site for a permanent mobilization, training, and supply station for the Puget Sound area in the vicinity of American Lake, Washington.

From the contents of your letter, as well as other sources, I am advised that subsequent to the date of my letter, above referred to, the location of a training camp (Camp Lewis) for units of the National Army on parts of the land colored in yellow on the map referred to in my letter necessitated requests for other more valuable lands which had been designated in pink on said map as not being a part of the proposition; that such requests were made by the official representatives of the Secretary of War for military reasons; that Pierce County has already acquired the title to such lands, together with other lands marked in yellow on said map, the aggregate area at this time being 36,930 acres; that another condemnation proceeding is now pending to acquire the remainder of the tract, which will include other lands marked in pink on said map;
197 that the estimated cost of acquiring the lands designated in yellow on said map was $2,000,000, which was the amount authorized by the electors of the county and the amount of indebtedness limited by the act of the Washington Legislature, chapter 3, Laws of 1917; that in your opinion, if the land to be acquired had been confined to the areas designated in yellow on said map the approximate acreage of 70,000 acres could be obtained for less than the $2,000,000, but since the new areas acquired as above set forth have cost $297,436, to which will be added other pink areas yet to be taken, you doubt whether the funds yet remaining will be sufficient to acquire the full area of approximately 70,000 acres as contemplated in the proposition contained in my letter of December 2, 1916; that you estimated the amount of the fund yet remaining with which to pay for the land yet to be acquired at $600,000; that as a plan for using the available funds for acquiring the remainder of the land which is most desirable for the purposes of the United States you have submitted a map attached to your letter, marked "B," prepared by Captain Howard M. Smitten, Quartermaster Corps, Camp Lewis, the official representative of the Secretary of War to select the land, upon which is marked the land next to be acquired in zones in the order designated on the map which is to be

condemned in such order until the total area is secured or until the fund is exhausted, after first deducting the expenses of acquiring the land.

You request that the proposition outlined in my letter of December 2, 1916, be modified so as to conform to the modifications required by changed conditions as above set forth. Such changes to be as follows:

(a) By approving the selection and acquisition of the lands already obtained as set forth on the map marked "A" accompanying your letter;

(b) By approving the selection and plan of obtaining the remainder of the lands as set forth on the map attached to your letter marked "B";

(c) That if the $2,000,000 of Pierce County is exhausted, after first deducting the expenses before the full 70,000 acres are
198 required, Pierce County shall nevertheless be deemed to have in all respect complied with the requirements of the proposition outlined in my letter of December 2, 1916.

You are advised, that after considering the matter as outlined above, I hereby accept the modification of the original agreement, as set forth, under paragraphs (a), (b), and (c) above, and you may proceed accordingly.

Very respectfully,

SECRETARY OF WAR.

199 United States Circuit Court of Appeals for the First Circuit.

ROLAND R. POTHIER, PETITIONER, APPELLANT,

v.

WILLIAM R. RODMAN, UNITED STATES MARSHAL, RESPONDENT, APPELLEE.

Order granting leave to proceed in forma pauperis.

On April 3, 1923, a motion for leave to proceed in forma pauperis with supporting affidavit of poverty was filed by appellant and the following order of court was entered:

On consideration of the motion for leave to proceed in forma pauperis and affidavit by appellant, leave is hereby granted appellant to proceed in forma pauperis and it is ordered that the expense of printing the record on appeal be paid by the United States, under the provisions of the act of June 27, 1922, 42 Stat. 666.

By the court,

ARTHUR I. CHARRON, *Clerk*.

Motion that the court order the printing of exhibits as a part of the record.

Filed April 13, 1923.

The appellant in the above-entitled cause moves the court for an order that all the exhibits now on file in said cause, with the exception of the map, be ordered printed, as a part of the record.

ROLAND R. POTHIER,
By DAVIS G. ARNOLD,
His Attorney.

PROVIDENCE, R. I., *1002 Union Trust Bldg.*

200 APRIL 12, 1923.

Consent to the granting of the above motion is hereby given.

HAROLD A. ANDREWS,
Ass't U. S. Attorney for the District of Rhode Island,
Attorney for Appellees.

United States Circuit Court of Appeals for the First Circuit.

Order of court.

April 13, 1923.

Upon motion of appellant, assented to, it is ordered that the exhibits in this case, except the maps, be printed in the record.

By the court.

ARTHUR I. CHARRON, *Clerk.*

United States Circuit Court of Appeals for the First Circuit.

Stipulation.

Filed June 4, 1923.

It is hereby stipulated and agreed that the above-entitled appeal may be considered as an appeal from an order of the court below denying a petition for writ of habeas corpus, filed to test the legality of the restraint under the warrant of removal authorized by the opinion of the court below, pages 50 to 53, of the record.

DAVIS G. ARNOLD,
Attorney for Appellant.
NORMAN STANLEY CASE,
U. S. Attorney for District of R. I.
HAROLD A. ANDREWS,
Assistant U. S. Attorney for District of R. I.

201 United States Circuit Court of Appeals for the First Circuit.

[Title omitted.]

Opinion of the court.

June 21, 1923.

BINGHAM, J.: The appellant, Roland R. Pothier, was indicted in the District Court for the Southern Division of the Western District of the State of Washington on the thirteenth day of October, 1922, for the deliberate murder, with malice aforethought, of Alexander P. Cronkhite on the twenty-fifth day of October, 1918, "within and on land theretofore acquired for the exclusive use of the United States and under the exclusive jurisdiction thereof and within the Southern Division of the Western District of Washington, to wit, within and on the Camp Lewis Military Reservation," contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States. On October 19, 1922, an affidavit (Exhibit D) was filed by John J. Daly before the United States
302 commissioner for the District of Rhode Island, wherein it was charged that Pothier had been indicted in the District Court for the Southern Division of the Western District of Washington for the wilful murder of Alexander P. Cronkhite on "the 25th of October, 1918, at, to wit, Camp Lewis Military Reservation, within the Southern Division of the Western District of Washington," * * * in violation of section 275 of the Penal Code of the Revised Statutes of the United States"; that a bench warrant on said indictment had been issued from said district court against him, upon which a return had been made by the United States marshal of said district that he was unable to find the defendant; and that said Pothier had theretofore "fled from said Southern Division of the Western District of Washington and entered and is now in the State of Rhode Island, in the District of Rhode Island." Although the affidavit (Exhibit D) did not ask that a warrant issue for his apprehension, such a warrant was issued by the commissioner on the nineteenth day of October, 1922, reciting that John J. Daly "had made a complaint in writing under oath before me" and setting forth the matter therein referred to as stated in the affidavit, on which the appellant was arrested and brought before him "to answer the said complaint." What hearing, if any, was had and what evidence, if any, was offered before the commissioner the record does not show further than it is recited in the warrant of commitment, which was issued by the commissioner on the nineteenth day of October, 1922, committing him to jail, to wit: That "after an examination being made this day held by me, it appearing that said offense had been committed, and probable cause being shown to believe said Roland R. Pothier committed said offense as charged." On the sixth day of December, 1922, the appellant petitioned the District Court of Rhode Island for a writ of habeas corpus, alleging, among other things, that the order of commitment was absolutely void and that he was confined and deprived of his liberty in violation of the constitution and the statutes of the United States.

and praying that he be brought before the court for hearing and that a writ of certiorari issue to the commissioner directing him to
203 certify to the court "all the proceedings which took place before him and all the evidence that was offered before him in said proceedings, which resulted in the issue of said commitment." On the seventh day of December, 1922, citations were issued and served requiring the marshal to produce the appellant before the court for hearing on the eleventh day of December, 1922, and show cause why said petition should not be granted, and directing the commissioner to certify to the court all the proceedings had before him and all the evidence offered in said proceedings. On December 6, the United States district attorney filed a petition asking for an order directing the removal of the appellant to the Southern Division of the Western District of Washington, agreeably to the provisions of section 1014 of the Revised Statutes of the United States. On this petition the court, on the seventh day of December, 1922, issued a citation, returnable December 11, 1922. On December 11, 1922, a hearing was had upon the petition for a writ of habeas corpus and for a writ of certiorari and on the petition for an order of removal. Evidence having been offered in support of the respective contentions of the parties, the court took the matter under advisement. On January 11, 1923, the district judge filed an opinion, in which he stated:

"It appearing that the indictment was by a court of competent jurisdiction, that there was probable cause for his commitment by the commissioner, and that his imprisonment, restraint, and detention were in accordance with law—

"The petition is denied."

On the same day the court also filed an opinion with reference to the petition for removal, in which he directed that a warrant for removal issue in accordance with the prayer of the petition, it having been ruled by the court that "the defendant has failed to overcome the prima facie case made by the indictment, and that the evidence fails to show the want of probable cause."

An appeal was taken directly to the Supreme Court, but, inasmuch as the question at issue did not relate to the jurisdiction of the District Court of Rhode Island but went to the merits of the controversy, the case was transferred to this court.

204 The crime charged in the indictment is not for a violation of section 275 of the Penal Code, as stated in the affidavit filed with the commissioner and referred to by him as a complaint, but for a violation of section 272, paragraph 3, and section 273 of the Penal Code. Section 275 simply prescribes the penalty for the offenses defined in sections 272, 273, and 274. Sections 272, 273, and 275 read as follows:

"SEC. 272. The crimes and offenses defined in this chapter shall be punished as herein prescribed: * * *

"Third. When committed within or on any lands reserved or acquired for the exclusive use of the United States, and under the

exclusive jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building."

"SEC. 273. Murder is the unlawful killing of a human being with malice aforethought. Every murder perpetrated by poison, lying in wait, or any other kind of wilful, deliberate, malicious, and premeditated killing; or committed in the perpetration of, or attempt to perpetrate, any arson, rape, burglary, or robbery; or perpetrated from a premeditated design unlawfully and maliciously to effect the death of any human being other than him who is killed, is murder in the first degree. Any other murder is murder in the second degree."

"SEC. 275. Every person guilty of murder in the first degree shall suffer death: * * *"

The Constitution of the United States, Article I, sec. 8, clause 17, reads as follows:

"SECTION 8. The Congress shall have power * * * To exercise exclusive legislation in all cases whatsoever over such District (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the Government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings."

205 The indictment, as above stated, charged that the appellant, on October 25, 1918, deliberately and with malice aforethought shot Alexander P. Cronkhite "within and on lands theretofore acquired for the exclusive use of the United States, and under the exclusive jurisdiction thereof, and within the Southern Division of the Western District of Washington, to wit, within and on the Camp Lewis Military Reservation." There is no dispute that Cronkhite was killed on the Camp Lewis Military Reservation on the date named or that the reservation was within the Southern Division of the Western District of the State of Washington. The appellant denies that he committed the crime and contends that the evidence introduced before the court at the hearing on the petition for a writ of habeas corpus and for an order of removal to the State of Washington shows that, at the time when Cronkhite was killed, the land constituting Camp Lewis Military Reservation had not been acquired by the United States; that the sovereignty of the State of Washington over it had not been abdicated and had not become vested in the Government of the United States; that he had, therefore, not committed a crime against the United States as charged in the indictment, and that the District Court for the Southern Division of the Western District of Washington was without jurisdiction over the offense.

Inasmuch as this was the question desired to be litigated on this appeal and the evidence bearing upon the questions at issue on the

petition for removal had not been heard or the order of removal entered at the time the habeas corpus application was filed, it was agreed between the parties, in order to avoid the delay that would be occasioned by bringing another petition for a writ of habeas corpus to test the validity of the order, that the present petition for such a writ should be treated as having been brought after the order of removal was entered and with like effect.

It has been held in this circuit in Hastings v. Murchie, 219 Fed. 83, 88, following the decisions in Tinsley v. Treat, 205 U. S. 20, and United States v. Black, 160 Fed. 431, that under section 1014 of the Revised Statutes of the United States (under which the
206 order of removal in this case was made), when an offender against the United States has been indicted in a district in a State other than the district of arrest, then, after the offender has been committed, it becomes the duty of the district judge, on inquiry, to issue a warrant of removal; that the inquiry which the judge is called upon to make involves judicial discretion; that he must look into the indictment to ascertain if an offense against the United States is charged, find whether there was probable cause, and determine whether the court to which the accused is sought to be removed has jurisdiction of the same; that, on such hearing, the indictment, though prima facie evidence of probable cause, is not conclusive; that evidence tending to show that no offense triable in the district to which removal is sought had been committed in that district should be received; and that to decline to receive it involved the denial of a right secured by the statute under the Constitution.

In this case the district judge received the evidence bearing upon the question whether there was probable cause to believe that the appellant had committed the crime charged on land within Camp Lewis Military Reservation, within the exclusive jurisdiction of the United States in the Southern Division of the Western District of Washington, and found that there was probable cause to believe that he had committed such crime against the United States with that district, and that the District Court of the Southern Division of the Western District of Washington had jurisdiction of the offense.

The removal statute (sec. 1014) does not provide that the decision of the district judge ordering the removal of an offender shall be final, but if we assume it to be final where the offender has been accorded a fair hearing on substantial evidence, and that, in such a case, the order of removal and proceedings thereunder would not be reviewable on habeas corpus, yet we do not understand that, if his findings are so entirely unsupported by evidence as to be unreasonable and to constitute an abuse of discretion and a denial of due process of law, they may not be so reviewed. In fact, it has been so held in this circuit in Ex parte Petkos, 212 Fed. 275, 277;
207 which was a case relating to an order of deportation of an alien by the Secretary of Commerce and Labor under a statute expressly making the findings of the Secretary final, which decision

s sustained in its main features on appeal to this court. United ates v. Petkos, 214 Fed. 978. And in the case of Gonzales v. lliams, 192 U. S. 1, where the petitioner, a citizen of Porto Rico, d been remanded to the custody of the United States Commis- ner of Immigration for deportation under the immigration act March 3, 1891 (26 Stat. at Large, 1084), as an alien immigrant, court, on habeas corpus, reviewed the question whether the peti- ner, in view of the facts found, was an alien immigrant within the aning of the act, and held that the "commissioner had no juris- tion to detain and deport her by deciding the mere question of to the contrary; and she was not obliged to resort to the superin- dent or the Secretary," in order to enable her to maintain her ition. In United States v. Sing Tuck, 194 U. S. 161, at page . Mr. Justice Holmes, in speaking of the case of Gonzales v. lliams, said:

"There was no use in delaying the issue of the writ until an appeal d been taken because in that case there was no dispute about the ts but merely a question of law."

And in other cases under the immigration act where the party ered deported as being an alien brought a petition for a writ habeas corpus alleging and claiming that he was a citizen of the ited States, it has been held that his citizenship, although it in- ved a question of fact, could be inquired into on habeas corpus, his rights as a citizen were protected by the Constitution. And n where the applicant ordered deported was not and did not im to be a citizen of the United States it has been held that he ght have reviewed on habeas corpus the findings of the executive ers of the Government, if such findings were not authorized by act or were not sustained by substantial evidence. Zakonaite Wolfe, 226 U. S. 272, 274; Kwock Jan Fat v. White, 253 U. S. 457; Skeffington v. Katzeff, 277 U. S. 129. And in this cir- cuit, in the last-named case, it was held that while the find- ings of fact by the executive officers are final, yet, if such findings are not authorized by the act or are not sustained substantial evidence, they may be reviewed and reversed on eas corpus.

f, in deportation proceedings where the rights of aliens are in- ved, the findings of the executive officers may be reviewed on eas corpus where there is no substantial evidence to support the dings, we think that, in removal proceedings where the rights of zens are at stake, review may be had when there is no substantial dence to warrant the finding of probable cause by the district rt, or where, on all the evidence produced before the court, no er conclusion could be reached than that there was want of bable cause, or, what is the same thing, if the question of probable se depends upon the construction of a statute and written in- uments and the construction given them was erroneous or no con- uction of them was made. In all such cases the question presented

would be one of law, the determination of which would disclose whether the alleged offender was unlawfully restrained of his liberty by the order of removal. See also Mitchell v. Dexter, 244 Fed. 926 (1st Cir. 1917).

We have before us in this case all the evidence presented at the hearing before the district judge on the petition to remove, which includes the indictment, the testimony of four fact witnesses, correspondence between the Secretary of War and the attorney of the county commissioners of Pierce County in the State of Washington, and the act of the legislature of that State authorizing Pierce County as an arm of the State to acquire by condemnation or purchase land in the vicinity of seventy thousand acres located in the State, and donate the same to the United States for a military reservation. We have cited the sections of the statute under which the indictment was brought and the provisions of the Constitution disclosing the way in which the General Government may acquire title to land in a State and obtain the power of exclusive legislation over the same. The leading case in the Supreme Court construing this provision of the Constitution and section 272 (paragraph 3 of the Penal Code), is Fort Leavenworth R. R. Co. v. Lowe, 114 U. S. 525. It was there said:

209 "This power of exclusive legislation is to be exercised, as thus seen, over places purchased, by consent of the legislatures of the States in which they are situated, for the specific purposes enumerated. It would seem to have been the opinion of the framers of the Constitution that, without the consent of the States, the new Government would not be able to acquire lands within them; and therefore it was provided that when it might require such lands for the erection of forts and other buildings for the defence of the country, or the discharge of other duties devolving upon it, and the consent of the States in which they were situated was obtained for their acquisition, such consent should carry with it political dominion and legislative authority over them. Purchase with such consent was the only mode then thought of for the acquisition by the General Government of title to lands in the States. Since the adoption of the Constitution this view has not generally prevailed. Such consent has not always been obtained, nor supposed necessary, for the purchase by the General Government of lands within the States. If any doubt has ever existed as to its power thus to acquire lands within the States, it has not had sufficient strength to create any effective dissent from the general opinion. The consent of the States to the purchase of lands within them for the special purposes named is, however, essential, under the Constitution, to the transfer to the General Government with the title, of political jurisdiction and dominion. Where lands are acquired without such consent, the possession of the United States, unless political jurisdiction be ceded to them in some other way, is simply that of an ordinary proprietor. The property in that case, unless used as a

means to carry out the purposes of the Government, is subject to the legislative authority and control of the States equally with the property of private individuals."

And it was there held that the State might cede its exclusive jurisdiction over land acquired by the Federal Government within the State directly by an act of the legislature expressly to stating, or indirectly when the purchase by the United States was with the consent of the legislature of the State; and that, where the legislature directly ceded its sovereignty over land within the State by a formal act of cession, it might reserve the right to execute civil and criminal process within the ceded land issued under its
10 authority for acts done within and cognizable by the State, notwithstanding the cession. But once the cession of sovereignty was made over lands within a State purchased by the United States for one of the purposes designated in the statute and Constitution, "such consent under the Constitution operated to exclude all other legislative authority." The court also recognized in its opinion that the right of sovereignty of a State over land purchased by the United States within its boundaries were not to be taken away by implication; that the essence of the provision of the Constitution here under consideration was "that the State shall freely cede the particular place to the United States for one of the specific and enumerated objects. This jurisdiction can not be acquired tortiously or by disseizin of the State; much less can it be acquired by mere occupancy, with the implied or tacit consent of the State, when such occupancy is for the purpose of protection." (People v. Godfrey, 17 Johns. 225); that "where * * * lands are acquired in any other way by the United States within the limits of a State than by purchase with her consent, they will hold the lands subject to this qualification; that if upon them forts, arsenals, or other public buildings are erected for the uses of the General Government, such buildings, with their appurtenances, as instrumentalities for the execution of its powers, will be free from any such interference and jurisdiction of the State as would destroy or impair their effective use for the purposes designed." And it was held that, inasmuch as the land constituting the Fort Leavenworth Military Reservation was not purchased by the United States after Kansas became a State but was acquired by it by cession from France many years before, whatever political sovereignty or dominion the United States had over the place came from the cession of the State since its admission into the Union.

In this case there is no claim that the United States had acquired or reserved title to the land embraced within the limits of Camp Lewis Military Reservation before or at the time Washington became a State. The evidence shows that its title was acquired subsequent to that time. Unless it had acquired title with the consent of the State at the time Cronkhite met his death on the
11 military reservation, the crime of murder charged in the indictment was not an offense against the United States.

The District Court in passing upon this question apparently entertained the view that, inasmuch as the evidence showed that before the delivery of the deed and its acceptance by the Secretary of War the United States military authorities had entered upon some of the land acquired by the county and erected buildings and occupied the same with 50,000 men, the State thereby yielded up its sovereignty and the United States acquired exclusive jurisdiction over the land thus occupied; and that this being so, the prima facie case of probable cause made by the indictment was not overcome. But, as we have seen above, this evidence had no tendency to show that the State had ceded its sovereignty, as the State's right of sovereignty is not to be taken away by implication.

An examination of the act of the Legislature of Washington of 1917, under which Pierce County was authorized to acquire and to donate the land here in question, discloses that it was drawn with great care. It recites that the Secretary of War, with the approval of the President of the United States, had agreed on behalf of the Federal Government to establish in Pierce County, Washington, a permanent mobilization, training, and supply station, on condition that land in Pierce County aggregating approximately seventy thousand acres, at such location or locations as have been or may be hereafter, from time to time, selected or approved by the Secretary of War, be conveyed to the United States, with the consent of the State of Washington, free of cost to the United States. In section 2 there was imposed upon Pierce County an indebtedness not to exceed two million dollars and the obligation to acquire by condemnation or otherwise land in Pierce County for the purpose above named and convey all such lands to the United States to be used for that purpose. Section 3 provided for the issuing of bonds for the indebtedness. In sections 4, 5, 6, and 7 provision was made for the assessment of taxes and the payment of the bonds and interest, and in sections 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, and 19 the
212 power of eminent domain was given for the acquisition of the lands and the mode of procedure thereunder pointed out in great detail. Section 20 reads as follows:

"SEC. 20. Pursuant to the Constitution and laws of the United States, and especially to paragraph seventeen of section 8 of article one of such Constitution, the consent of the Legislature of the State of Washington is hereby given to the United States to acquire, by donation from Pierce County, title to all lands herein intended to be referred to, to be evidenced by the deed or deeds of Pierce County, signed by the chairman of its board of county commissioners and attested by the clerk of such board under the seal of such board, and the consent of the State of Washington is hereby given to the exercise by the Congress of the United States of exclusive legislation in all cases whatsoever over such tracts or parcels of land so conveyed to it: Provided, Upon such conveyance being concluded a sufficient description by metes and bounds and an accurate plat or map of each such tract or parcel of land be filed in the auditor's office of Pierce

County, together with copies of the orders, deeds, patents, or other evidences in writing of the title of the United States: And Provided, That all civil process issued from the courts of this State and such criminal process as may issue under the authority of this State against any person charged with crime in cases arising outside of said reservation may be served and executed thereon in the same mode and manner and by the same officers as if the consent herein given had not been made."

It is apparent that this section, read in the light of the surrounding circumstances, means that the sovereign right of the State of Washington over the land in question and the acquisition of exclusive legislative authority and jurisdiction by the United States thereover was not to take place when the land had been conveyed by deed, but only when, upon such conveyance being concluded, a sufficient description by metes and bounds and an accurate map of each such tract or parcel of land, together with copies of orders, deeds, patents, and other evidences of title, had been filed for record in the auditor's office of Pierce County. The deed was not executed and acknowledged until the first day of October, 1919, when it was signed and acknowledged by the Board of County Commissioners for
213 Pierce County and accepted on behalf of the United States of America by Newton D. Baker, Secretary of War; and it was not recorded in the office of the auditor of Pierce County until November 15, 1919.

The correspondence in the case indubitably shows that the parties understood and acted upon the idea that no title was to pass to the United States until the deed was delivered and accepted by the Secretary of War (see letters of December 2, 1916, and June 21, 1918); and the acts of Congress show that down to July 2, 1917, no public money could be expended upon any land acquired by the United States (much less to be acquired) for the purpose of erecting thereon any armory, arsenal, fort, fortification, navy yard, etc., until the written opinion of the Attorney General had been had in favor of the validity of the title, "nor until the consent of the legislature of the State in which the land or site may be, to such purchase, has been given." Rev. Stat. s. 355; see letter of December 2, 1916, Exhibit C, written prior to July 2, 1917. On July 2, 1917, the Secretary of War was given authority to purchase or condemn land for fortifications, coast defenses, and military training camps or to enter into contracts for the use of the same for such purposes and to "accept donations of land and the interest and rights pertaining thereto required for the above-mentioned purposes"; and it was further provided:

"That when such property is acquired in time of war or the imminence thereof upon the filing of the petition for the condemnation of any land, temporary use thereof, or other interest therein or right pertaining thereto to be acquired for any of the purposes aforesaid, immediate possession thereof may be taken to the extent of the interest to be acquired and the lands may be occupied and

used for military purposes, and the provision of section three hundred and fifty-five of the Revised Statutes, providing that no public money shall be expended upon such land until the written opinion of the Attorney General shall be had in favor of the validity of the title, nor until the consent of the legislature of the State in which the land is located has been given, shall be, and the same are hereby, suspended during the period of the existing
214 emergency." Act of July 2, 1917, 40 Stat. at Large, 241; act of April 11, 1918, 40 Stat. at Large, 518; see letter of July 1, 1918, where it says: "prior to the expiration of the existing war."

This shows plainly the circumstances under which the authorities of the General Government entered upon a portion of the land and expended money in the erection of buildings thereon in advance of having obtained title thereto or the approval of title by the Attorney General, and without having obtained the consent of the State.

We are of the opinion that no other conclusion can be drawn from the evidence than that, at the time the crime charged in the indictment was committed, the United States had acquired no title in the land embraced within Camp Lewis Military Reservation; that the sovereignty of the State over the tract had not then been yielded up and was not until the deed, map, etc., were filed in the office of the county auditor of Pierce County for record, which was not until November 15, 1919, more than a year after the alleged murder. This being so, there is an absolute want of probable cause for the removal of the appellant to answer to the crime charged. Green v. Henkel, 183 U. S. 249, 261.

The order of the District Court directing the removal of the appellant is reversed, and the petition for an order of removal is denied. The decree of the District Court dismissing the petition for a writ of habeas corpus is reversed; and it is ordered that the appellant be discharged from custody.

215 United States Circuit Court of Appeals for the First Circuit.

Final decree.

June 21, 1923.

This cause came on to be heard June 4, 1923, upon the transcript of record of the District Court of the United States for the District of Rhode Island, and was argued by counsel.

Upon consideration whereof it is now, to wit, June 21, 1923, here ordered, adjudged, and decreed as follows: The order of the District Court directing the removal of the appellant is reversed, and the petition for an order of removal is denied. The decree of the District Court dismissing the petition for a writ of habeas corpus is reversed; and it is ordered that the appellant be discharged from custody.

By the court.

ARTHUR I. CHARRON, *Clerk.*

Order of court that mandate issue forthwith.

Filed July 6, 1923.

Upon motion of appellant, assented to, it is ordered that mandate herein issue forthwith.

By the court.

ARTHUR I. CHARRON, *Clerk.*

Mandate.

July 6, 1923.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judge of the District Court of the United States for the District of Rhode Island, greeting:

Whereas lately in the District Court of the United States for the District of Rhode Island, before you, in a cause numbered and entitled—

216 [Title omitted.]

The following order was entered January 30, 1923, as of January 11, 1923:

Order of court.

January 30, 1923.

This cause came on to be heard upon the petition, order to show cause why the writ should not issue, the oral objections of the respondents and the United States to the sufficiency of said petition, and upon the evidence introduced in the correlative matter of the petition of the United States attorney for warrant of removal of said Roland R. Pothier, was argued by counsel and upon consideration thereof, it appearing (1) that said petition failed to state sufficient grounds for the granting of the writ of habeas corpus and (2) that the imprisonment, restraint, and detention of said Roland R. Pothier were in accordance with law, it is hereby ordered, adjudged, and decreed that the petition for writ of habeas corpus be, and the same hereby is, denied and dismissed.

Entered as the order and decree of this court, January 30, A. D. 1923.

[L. S.] THOMAS HOPE, *Clerk.*

Enter as of January 11, 1923.

ARTHUR L. BROWN,
United States District Judge.

And whereas said Roland R. Pothier, petitioner, appealed from said order of court to this United States Circuit Court of Appeals for the First Circuit, as by the inspection of the transcript of rec-

ord in said cause of the said District Court, which was brought into the United States Circuit Court of Appeals for the First Circuit, by virtue of the aforesaid appeal, agreeably to the act of Congress in such cases made and provided, fully and at large appears:

And whereas in the present term of October, in the year of our Lord one thousand nine hundred and twenty-two, the said cause came on to be heard before the said Circuit Court of Appeals, on the said transcript of record, and was argued by counsel:

On consideration whereof, it is now, to wit, here ordered,
217 adjudged, and decreed as follows: The order of the District Court directing the removal of the appellant is reversed, and the petition for an order of removal is denied. The decree of the District Court dismissing the petition for a writ of habeas corpus is reversed; and it is ordered that the appellant be discharged from custody.

You therefore are hereby commanded that such further proceedings be had in said cause in conformity with the aforesaid decree of this court, as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness the Honorable W. H. Taft, Chief Justice of the United States, the sixth day of July, in the year of our Lord one thousand nine hundred and twenty-three.

ARTHUR I. CHARRON,
Clerk of the United States Circuit Court of Appeals for the First Circuit.

Clerk's certificate.

I, Arthur I. Charron, clerk of the United States Circuit Court of Appeals for the First Circuit, certify that the foregoing pages, numbered 1 to 217, inclusive, hereto prefixed, contain and are a true copy of the record and all proceedings to and including September 3, 1923, in the cause in said court numbered and entitled:

No. 1629. Roland R. Pothier, petitioner, appellant, v. William R. Rodman, United States marshal, respondent, appellee.

In testimony whereof I hereunto set my hand and affix the seal of said United States Circuit Court of Appeals for the First Circuit, at Boston, in said First Circuit, this fifth day of September, A. D. 1923.

[SEAL.] ARTHUR I. CHARRON, *Clerk.*

218 *Writ of certiorari and return.*

Filed Feb. 18, 1924.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the honorable the judges of the United States Circuit Court of Appeals for the First Circuit, Greeting:

Being informed that there is now pending before you a suit in which Roland R. Pothier is appellant, and William R. Rodman, United States marshal, is appellee, No. 1629 which suit was removed into the said Circuit Court of Appeals by virtue of an appeal from the District Court of the United States for the District of Rhode Island, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court
219 of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, the twenty-sixth day of October, in the year of our Lord one thousand nine hundred and twenty-three.

[SEAL.] WM. R. STANSBURY,
Clerk of the Supreme Court of the United States.

220 *Return on writ of certiorari.*

United States Circuit Court of Appeals for the First Circuit.

And now here the judges of the United States Circuit Court of Appeals for the First Circuit make return to this writ by annexing hereto and sending herewith a stipulation between counsel for the respective parties in the cause in the Supreme Court of the United States wherein this writ of certiorari issued that the certified copy of the record heretofore filed in the Supreme Court of the United States shall constitute the return to the writ of certiorari issued therein.

In testimony whereof, I, Arthur I. Charron, Clerk of said United States Circuit Court of Appeals for the First Circuit, here to set my hand and affix the seal of said court, at Boston, in said First Circuit, this fifteenth day of February, A. D. 1924.

[SEAL.] ARTHUR I. CHARRON, *Clerk.*

221 In the Supreme Court of the United States, October Term, 1923.

[Title omitted.]

Stipulation as to return to writ of certiorari.

(Filed in Circuit Court of Appeals February 15, 1924.)

It is hereby stipulated by counsel for the parties to the above-entitled cause that the certified copy of the transcript of the record now on file in the Supreme Court of the United States shall constitute the return of the clerk of the United States Circuit of Appeals for the First Circuit to the writ of certiorari granted therein.

JAMES M. BECK,
Solicitor General.
DAVIS G. ARNOLD,
Counsel for Respondent.

A true copy.
Attest:
[SEAL.] ARTHUR I. CHARRON, *Clerk.*

222 [File endorsement omitted.]

223 [File endorsement omitted.]

No. 546

In the Supreme Court of the United States

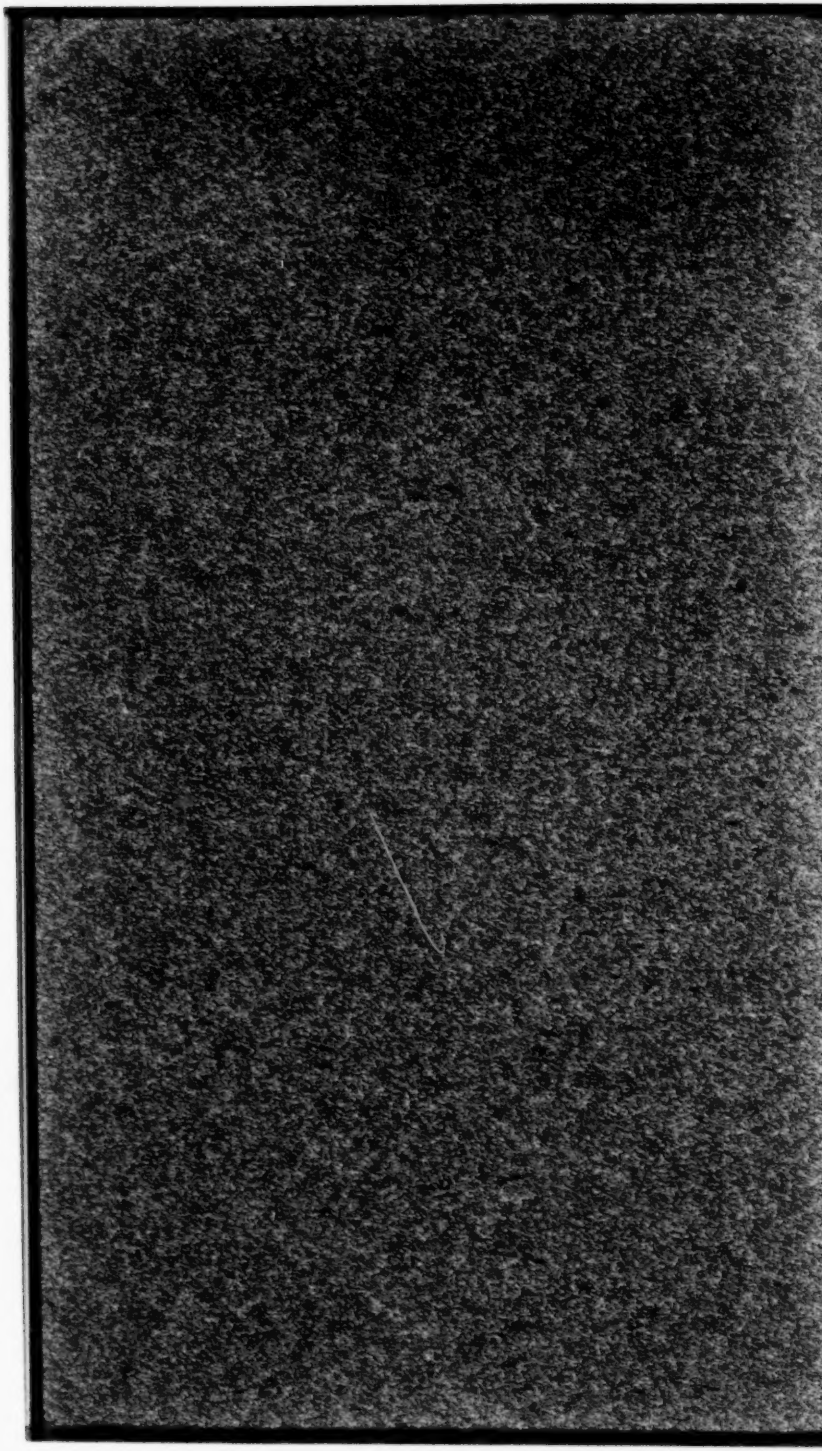
October Term, 1924

WILLIAM D. MITCHELL, SOLICITOR GENERAL,
PETITIONER,

v.

ROLAND H. POTTER, RESPONDENT.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHT CIRCUIT.



In the Supreme Court of the United States.

OCTOBER TERM, 1923.

WILLIAM R. RODMAN, UNITED STATES Marshal, petitioner,
v.
ROLAND R. POTHIER, RESPONDENT.
} No. ——.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

The Solicitor General on behalf of William R. Rodman, the United States Marshal for the District of Rhode Island, prays that a writ of certiorari be issued to review the judgment rendered by the Circuit Court of Appeals for the First Circuit on the 21st day of June, 1923, reversing a judgment rendered by the United States District Court for the District of Rhode Island.

STATEMENT OF THE CASE.

On the 25th day of October, 1918, Major Alexander P. Cronkhite, United States Army, met his death by gunshot wounds at Camp Lewis, in the State of Washington. Thereafter, on the 13th day of October, 1922, Roland R. Pothier, the respondent, and one, Robert Rosenbluth, were indicted for the murder of said Cronkhite by the District Court of the United States for the Southern Division of the Western District of the State of Washington, the

indictment alleging that Major Cronkhite had been murdered upon territory under the exclusive jurisdiction of the United States. Pothier was later apprehended in the State of Rhode Island and committed to the custody of the marshal of the District of Rhode Island. On the 6th day of December, 1922, he sued out a writ of *habeas corpus*, which was heard by the United States District Court for the District of Rhode Island. On the same day the United States Attorney presented to the same court a petition for an order of removal. These two proceedings were heard together, and after hearing the District Court refused to release the prisoner and entered an order requiring his removal to the Southern Division of the Western District of the State of Washington for trial upon the indictment.

Thereafter an appeal was taken by Pothier to this court, which transferred it to the Circuit Court of Appeals for the First Circuit, upon the ground that the appeal should have been taken to that court. *Pothier* v. *Rodman* (March 12, 1923).

The Circuit Court of Appeals on the 21st day of June, 1923, reversed the order of the District Court which had directed the removal of the respondent, and denied the petition upon which it was based, and also reversed the order of the District Court dismissing the writ of habeas corpus and ordered that the respondent be discharged from custody. It is to review this decision that the writ of certiorari is sought. The decision of the Circuit Court of Appeals was based solely upon its ground that the *locus* of

the alleged crime was not territory under the exclusive jurisdiction of the United States. This question was thus treated below as one involving the jurisdiction of the court which found the indictment. That view, however, is erroneous. The question is not one of the jurisdiction of the District Court for the Western District of Washington, but of the jurisdiction of the United States. *Louie* v. *United States*, 254 U. S. 548.

The United States submits that the judgment of the Circuit Court of Appeals was erroneous for the following reasons:

At the time of the alleged crime, exclusive jurisdiction over the territory embracing the locus thereof had been expressly ceded by the State of Washington to the United States.

On December 2, 1916, the Secretary of War, with the approval of the President, agreed with Pierce County, Washington, that in consideration of the donation by said county to the United States of certain lands theretofore designated by the Secretary of War, the United States would establish thereon and maintain a permanent military reservation. (R. p. 185.)

Thereafter, on January 27, 1917, the Legislature of the State of Washington, by an act duly passed, imposed upon Pierce County the duty, and fully empowered it, to purchase or condemn the lands so designated by the Secretary of War, for donation to the United States, and by said act expressly

ceded to the United States exclusive jurisdiction thereof. (R. pp. 135, 146.)

The statute of the State of Washington is set forth in full beginning upon page 135 of the Record. One of the purposes of the act, as set forth in its title, is "Granting the consent of the State to such conveyance and ceding exclusive legislative jurisdiction to the United States over the lands so conveyed."

Section 20 of the act reads as follows:

> Pursuant to the Constitution and laws of the United States, and especially to paragraph seventeen of section 8 of Article I of such Constitution, the consent of the Legislature of the State of Washington, is hereby given to the United States to acquire, by donation from Pierce County, title to all lands herein intended to be referred to, to be evidenced by the deed or deeds of Pierce County signed by the chairman of its board of county commissioners and attested by the clerk of such board under the seal of such board, *and the consent of the State of Washington is hereby given to the exercise by the Congress of the United States of exclusive legislation in all cases whatsoever over such tracts or parcels of land so conveyed to it: Provided*, Upon such conveyance being concluded a sufficient description by metes and bounds and an accurate plat or map of each such tract or parcel of land to be filed in the auditor's office of Pierce county, together with copies of the orders, deeds, patents, or other evidences in writing of the title of the United States: *And provided*, That all civil process

> issued from the courts of this State and such criminal process as may issue under the authority of this State, against any person charged with crime in cases arising outside of said reservation, may be served and executed thereon in the same mode and manner and by the same officers as if the consent herein given had not been made.

Paragraph 17 of Section 8, Article I of the Constitution of the United States gives Congress power—

> To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places *purchased* by the Consent of the Legislature of the State in which the same shall be, for the Erection of Forts, Magazines, Arsenals, Dockyards, and other needful buildings.

The crime charged was murder, and by Paragraph 3 of Section 272 of the Penal Code murder is a crime against the United States—

> When committed within or on any lands reserved or *acquired* for the exclusive use of the United States, and under the exclusive jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building.

The place where the alleged crime was committed was included within the territorial limits over which the court which found the indictment had jurisdiction. See Judicial Code, Section 112, by which Pierce County is included in the territory which constitutes the Southern Division of the Western District of Washington.

At the time of the alleged crime (October 25, 1918) the land embracing the *locus* thereof had been turned over by Pierce County to the United States and the United States had established thereon a military cantonment and was exercising over the same exclusive control and jurisdiction (R. pp. 24, 27, 31) pursuant to consent given by the Legislature of the State of Washington.

Where lands are, with the consent of the State, "acquired" by the United States for one of the purposes specified in the constitutional provision, the jurisdiction of the United States becomes exclusive. *Fort Leavenworth Railroad Co.* v. *Lowe*, 114 U. S. 525.

The agreement of December 2, 1916, provided for the designation of the lands by the Secretary of War, and they were at the time designated by the Secretary of War (R. pp. 24–25), and thereafter, on January 27, 1917, the Legislature of the State of Washington by the Act already cited expressly authorized and requested Pierce County to purchase or condemn the same for *donation to the United States*. Designated tracts aggregating 36,930 acres, were duly condemned by Pierce County in pursuance

of the authority and direction of the Legislature of the State, and before July 1, 1918, such lands, which embraced the *locus* of the alleged crime, were *actually donated to and actually accepted by* the United States (R. p. 30), and at the time of the murder the United States was using the same for military training and maneuvers, with the assent of the Legislature of the State, and the United States was in fact exercising exclusive jurisdiction and control over the same. (R. p. 30 *et seq.*, p. 39.) At the time last mentioned, as respects the lands described, the agreement of December 2, 1916, had been performed and completed by both parties to the transaction and nothing remained to be done except the delivery by Pierce County to the United States of the deed evidencing title to the property. Although at that time the transaction as respects this 36,930 acres had been completed on both sides, and the deed offered, the execution and delivery of the deed had been postponed at the suggestion of the War Department until the remainder of the lands embraced in the agreement of December 2, 1916, had been purchased or condemned by Pierce County, so that all the land could be included in one deed. (R. p. 31.) The deed to the above-mentioned tract, as well as the remainder of the tract embraced in Camp Lewis, was executed on October 1, 1919, and recorded on November 15, 1919. (R. p. 148.)

At the time of the murder the United States was exercising, with the consent of the legislature of the State, exclusive de facto jurisdiction over the territory embracing the locus of the crime.

The murder took place at Camp Lewis. Cronkhite was shot while performing his duties as an Army officer at such camp. Pothier and Rosenbluth, who are indicted for the murder, were subordinates of the murdered man, and the alleged murder took place while all three were engaged in Army maneuvers.

Camp Lewis was practically completed on September 1, 1917. Barracks, streets, waterworks, sewers, etc., had been constructed, and on the date last mentioned the 91st Division of the Army was then in camp and in course of training. Guards were established about the area and military rules and regulations were established and enforced, and the administration and control of the territory *de facto*, if not *de jure*, was exclusively and completely in the United States. (R. p. 39 *et seq.*) This exclusive administration and control was fully assented to by the State authorities, and no State officer exercised, or undertook to exercise, any authority, control, or jurisdiction whatsoever within the area embraced in Camp Lewis.

Such was the situation when Cronkhite was killed on October 25, 1918.

In the case of *Holt* v. *United States*, 218 U. S. 245, a murder case, the point was made by plaintiff in error that the record failed to show exclusive Federal jurisdiction over the place where the crime was laid.

This court, Mr. Justice Holmes writing, said at page 252:

> The documents referred to are not before us, but they properly were introduced, and, so far as we can see, justified the finding of the jury, even if the evidence of the *de facto* exercise of exclusive jurisdiction was not enough *or if the United States was called on to try title in a murder case.* We think it unnecessary to discuss this objection in greater detail.

The District Court was right in refusing to discharge the respondent in a habeas corpus proceeding merely because a controverted question of fact had been raised.

Whether the authority of the United States had or had not attached to the specified place of the alleged murder was a question of fact to be decided by the District Court for the Western District of Washington, and even if that authority had not attached, that court had jurisdiction to determine the question. The question was not one of the jurisdiction of that court but one which went to the merits of the case. In other words, the decision of that question would be one of the elements tending to show that the respondent had or had not violated the laws of the United States. Such questions are for the determination of the trial court. *Henry* v. *Henkel*, 235 U. S. 219. Such was the reasoning of the district judge who, in his opinion (Record, p. 50), said:

> While it is true that in order to establish the crime against the United States it must appear

No. 546

Supreme Court of the United States.

OCTOBER TERM, 1923.

WILLIAM R. RODMAN, United States Marshal,
Petitioner,

vs.

ROLAND R. POTHIER,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

DAVIS G. ARNOLD,
Counsel for Respondent.

PRINTED IN THE UNITED STATES BY B. H. TYRREL, PRINTER, 206-8 FULTON STREET, NEW YORK.

INDEX.

TABLE OF CASES CITED.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1923.

WILLIAM R. RODMAN, United States Marshal,
Petitioner,

against

ROLAND R. POTHIER,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

I.

The respondent was indicted under Section 272 of the Federal Penal Code, for shooting Major Cronkhite on October 25, 1918, "within and on lands theretofore acquired for the exclusive use of the United States and under the exclusive jurisdiction thereof, and within the Southern Division of the Western District of Washington, within and on the Camp Lewis Military Reservation," and he was sought to be removed for trial under the indictment, fom Rhode Island to the State of Washington pursuant to Section 1014 of the United States Revised Statutes. In that proceeding it became the duty of the Court before which he was brought, to determine whether there was probable cause that an offense against the United States had been committed, and whether the Court to which the accused was sought to be removed had jurisdiction of the same.

The Circuit Court of Appeals has determined these questions in the negative. This case originally came be-

> that the place of its commission was "territory within the exclusive jurisdiction of the United States," yet the District Court where the indictment is pending has full jurisdiction to try and determine this fact, as well as other allegations of the indictment. The denial of this allegation as to the place of commission does not raise a question properly of the jurisdiction of the trial court, but goes to the merits, raising the question whether the act charged was a violation of Federal Law. *Louie v. United States*, 254 U. S. 548. In view of this late decision of the Supreme Court it is unnecessary to cite the earlier cases in which this distinction was pointed out.

The respondent having been charged with crime by an indictment, whose sufficiency on its face is not questioned, and the *locus* of the crime having been alleged as within the territorial limits of the court which found the indictment, as those limits are defined by law, the District Court of Rhode Island was right in ordering his removal for trial under Section 1014, Revised Statutes.

If upon the trial it appeared that the place where the alleged crime was committed was not a place to which the penal laws of the United States applied, then the respondent was not guilty and would, of course, be acquitted.

The Circuit Court of Appeals has thus erroneously attempted in a *habeas corpus* proceeding to try the question of the guilt or innocence of the accused.

CONCLUSION.

The question is one of importance to the United States.

If the decision of the Circuit Court of Appeals is allowed to stand unreversed, it will constitute a dangerous precedent in all cases where the United States Government, with the consent of a State, acquires, occupies, and exclusively controls territory within the State for the purpose of carrying on military operations. *Defect of title may become a new defense for murder.*

The decision of this question is of special importance in the particular case here involved because of the fact that the authorities of the State of Washington have consistently abstained from exercising jurisdiction to apprehend and punish anyone implicated in the alleged crime. The case of *Concessions Company* v. *Morris*, decided by the Supreme Court of Washington, 186 Pac. Rep. 655, shows that the county authorities of Pierce County, by demurring to the petition in that case, admitted as a fact that during the year 1918 the United States had exclusive jurisdiction over Camp Lewis.

Moreover, if proceedings should be instituted by State authorities to punish the parties implicated in this homicide, the courts of that State might not feel bound by the decision of the Circuit Court of Appeals but would follow any decision rendered by this court.

Without expressing an opinion on the question whether or not the crime of murder was actually committed, a question which of course can only be determined by a jury, it is of great importance to those charged with the administration of the criminal law and of great public importance that men indicted for murder should not escape trial altogether because neither the State court nor the Federal court will exercise jurisdiction. This is the only court which can decide finally the important question here involved, which from the nation-wide discussion and comment which the crime has excited must be regarded as one of great public interest.

JAMES M. BECK,
Solicitor General.

SEPTEMBER, 1923.

○

APPENDIX.

fore this Court on an appeal by Pothier from a decision of the United States District Court for Rhode Island directing his removal. By a decision rendered on March 12, 1923, *Pothier* v. *Rodman*, 261 U. S.—(43 Supr. Ct. Rep. 374), the record was transferred by this Court to the Circuit Court of Appeals for the First Circuit, on the ground that the question raised was not one directly appealable to this Court from the District Court, the objection raised being of a character which went to the merits, and not to the jurisdiction of the District Court of Rhode Island.

The Circuit Court of Appeals, in a careful opinion, which is appended hereto, proceeded to consider the question as to whether this was a proper case for removal under the statute, and the extent to which it could, in such proceeding, determine whether probable cause had been established showing that an offense against the United States had been committed.

That the Court possessed such power was determined in *Tinsley* v. *Treat*, 205 U. S. 20, *Price* v. *Henkel*, 216 U. S. 491, *Henry* v. *Henkel*, 235 U. S. 228, *United States* v. *Black*, 160 Fed. Rep. 431, and *Hastings* v. *Murchie*, 219 Fed. Rep. 83, 88, as well as in other cases cited in the opinion below.

Section 272 of the Federal Penal Code, which is the statute under which the indictment was found, refers to crimes and offenses punishable under the laws of the United States. The material provision reads

> "Third. When committed within or on any lands reserved or *acquired for the exclusive use of the United States, and under the exclusive jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State* in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building."

It is therefore an essential element of the offense, as is indicated also by the terms of the indictment, that the crime must have been committed on lands acquired for the exclusive use of the United States and under the exclusive jurisdiction thereof, or purchased or otherwise acquired by the United States by consent of the Legislature of the State in which the same shall be. Consequently if, in the removal proceedings, the proof negatived the existence of the essential element just mentioned, there was no probable cause for finding that a crime had been committed, and it was the duty of the Court to deny the application for removal.

The petition for the writ of certiorari totally ignores the character of these proceedings, and apparently proceeds on the theory that, because this question might be tried in the District Court for the Western District of Washington, the Federal Courts within the jurisdiction where the respondent was arrested cannot exercise the power conferred upon them by Section 1014 of the United States Revised Statutes.

The finding of an indictment is by no means conclusive (*Price* v. *Henkel*, 216 U. S. 491; *Tinsley* v. *Treat*, 205 U. S. 20). The duty of adjudication on the question of probable cause and of jurisdiction nevertheless rested upon the courts before which the respondent was brought. As was said by Mr. Justice Brewer in *Beavers* v. *Henkel*, 194 U. S. 73, 83, in language approved in *Tinsley* v. *Treat* and other cases, *supra*:

> "It may be conceded that no such removal should be summarily and arbitrarily made. There are risks and burdens attending it which ought not to be needlessly cast upon any individual. These may not be serious in a removal from New York to Brooklyn, but might be if the removal was from San Francisco to New York. And statutory provisions must be interpreted in the light of all that

ceded to the United States exclusive jurisdiction thereof. (R. pp. 135, 146.)

The statute of the State of Washington is set forth in full beginning upon page 135 of the Record. One of the purposes of the act, as set forth in its title, is "Granting the consent of the State to such conveyance and ceding exclusive legislative jurisdiction to the United States over the lands so conveyed."

Section 20 of the act reads as follows:

> Pursuant to the Constitution and laws of the United States, and especially to paragraph seventeen of section 8 of Article I of such Constitution, the consent of the Legislature of the State of Washington, is hereby given to the United States to acquire, by donation from Pierce County, title to all lands herein intended to be referred to, to be evidenced by the deed or deeds of Pierce County signed by the chairman of its board of county commissioners and attested by the clerk of such board under the seal of such board, *and the consent of the State of Washington is hereby given to the exercise by the Congress of the United States of exclusive legislation in all cases whatsoever over such tracts or parcels of land so conveyed to it: Provided*, Upon such conveyance being concluded a sufficient description by metes and bounds and an accurate plat or map of each such tract or parcel of land to be filed in the auditor's office of Pierce county, together with copies of the orders, deeds, patents, or other evidences in writing of the title of the United States: *And provided*, That all civil process

> issued from the courts of this State and such criminal process as may issue under the authority of this State, against any person charged with crime in cases arising outside of said reservation, may be served and executed thereon in the same mode and manner and by the same officers as if the consent herein given had not been made.

Paragraph 17 of Section 8, Article I of the Constitution of the United States gives Congress power—

> To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places *purchased* by the Consent of the Legislature of the State in which the same shall be, for the Erection of Forts, Magazines, Arsenals, Dockyards, and other needful buildings.

The crime charged was murder, and by Paragraph 3 of Section 272 of the Penal Code murder is a crime against the United States—

> When committed within or on any lands reserved or *acquired* for the exclusive use of the United States, and under the exclusive jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building.

The place where the alleged crime was committed was included within the territorial limits over which the court which found the indictment had jurisdiction. See Judicial Code, Section 112, by which Pierce County is included in the territory which constitutes the Southern Division of the Western District of Washington.

At the time of the alleged crime (October 25, 1918) the land embracing the *locus* thereof had been turned over by Pierce County to the United States and the United States had established thereon a military cantonment and was exercising over the same exclusive control and jurisdiction (R. pp. 24, 27, 31) pursuant to consent given by the Legislature of the State of Washington.

Where lands are, with the consent of the State, "acquired" by the United States for one of the purposes specified in the constitutional provision, the jurisdiction of the United States becomes exclusive. *Fort Leavenworth Railroad Co.* v. *Lowe*, 114 U. S. 525.

The agreement of December 2, 1916, provided for the designation of the lands by the Secretary of War, and they were at the time designated by the Secretary of War (R. pp. 24–25), and thereafter, on January 27, 1917, the Legislature of the State of Washington by the Act already cited expressly authorized and requested Pierce County to purchase or condemn the same for *donation to the United States*. Designated tracts aggregating 36,930 acres, were duly condemned by Pierce County in pursuance

of the authority and direction of the Legislature of the State, and before July 1, 1918, such lands, which embraced the *locus* of the alleged crime, were *actually donated to and actually accepted by* the United States (R. p. 30), and at the time of the murder the United States was using the same for military training and maneuvers, with the assent of the Legislature of the State, and the United States was in fact exercising exclusive jurisdiction and control over the same. (R. p. 30 *et seq.*, p. 39.) At the time last mentioned, as respects the lands described, the agreement of December 2, 1916, had been performed and completed by both parties to the transaction and nothing remained to be done except the delivery by Pierce County to the United States of the deed evidencing title to the property. Although at that time the transaction as respects this 36,930 acres had been completed on both sides, and the deed offered, the execution and delivery of the deed had been postponed at the suggestion of the War Department until the remainder of the lands embraced in the agreement of December 2, 1916, had been purchased or condemned by Pierce County, so that all the land could be included in one deed. (R. p. 31.) The deed to the above-mentioned tract, as well as the remainder of the tract embraced in Camp Lewis, was executed on October 1, 1919, and recorded on November 15, 1919. (R. p. 148.)

At the time of the murder the United States was exercising, with the consent of the legislature of the State, exclusive de facto jurisdiction over the territory embracing the locus of the crime.

The murder took place at Camp Lewis. Cronkhite was shot while performing his duties as an Army officer at such camp. Pothier and Rosenbluth, who are indicted for the murder, were subordinates of the murdered man, and the alleged murder took place while all three were engaged in Army maneuvers.

Camp Lewis was practically completed on September 1, 1917. Barracks, streets, waterworks, sewers, etc., had been constructed, and on the date last mentioned the 91st Division of the Army was then in camp and in course of training. Guards were established about the area and military rules and regulations were established and enforced, and the administration and control of the territory *de facto*, if not *de jure*, was exclusively and completely in the United States. (R. p. 39 *et seq.*) This exclusive administration and control was fully assented to by the State authorities, and no State officer exercised, or undertook to exercise, any authority, control, or jurisdiction whatsoever within the area embraced in Camp Lewis.

Such was the situation when Cronkhite was killed on October 25, 1918.

In the case of *Holt* v. *United States*, 218 U. S. 245, a murder case, the point was made by plaintiff in error that the record failed to show exclusive Federal jurisdiction over the place where the crime was laid.

This court, Mr. Justice Holmes writing, said at page 252:

> The documents referred to are not before us, but they properly were introduced, and, so far as we can see, justified the finding of the jury, even if the evidence of the *de facto* exercise of exclusive jurisdiction was not enough *or if the United States was called on to try title in a murder case.* We think it unnecessary to discuss this objection in greater detail.

The District Court was right in refusing to discharge the respondent in a habeas corpus proceeding merely because a controverted question of fact had been raised.

Whether the authority of the United States had or had not attached to the specified place of the alleged murder was a question of fact to be decided by the District Court for the Western District of Washington, and even if that authority had not attached, that court had jurisdiction to determine the question. The question was not one of the jurisdiction of that court but one which went to the merits of the case. In other words, the decision of that question would be one of the elements tending to show that the respondent had or had not violated the laws of the United States. Such questions are for the determination of the trial court. *Henry* v. *Henkel*, 235 U. S. 219. Such was the reasoning of the district judge who, in his opinion (Record, p. 50), said:

> While it is true that in order to establish the crime against the United States it must appear

> that the place of its commission was "territory within the exclusive jurisdiction of the United States," yet the District Court where the indictment is pending has full jurisdiction to try and determine this fact, as well as other allegations of the indictment. The denial of this allegation as to the place of commission does not raise a question properly of the jurisdiction of the trial court, but goes to the merits, raising the question whether the act charged was a violation of Federal Law. *Louie* v. *United States*, 254 U. S. 548. In view of this late decision of the Supreme Court it is unnecessary to cite the earlier cases in which this distinction was pointed out.

The respondent having been charged with crime by an indictment, whose sufficiency on its face is not questioned, and the *locus* of the crime having been alleged as within the territorial limits of the court which found the indictment, as those limits are defined by law, the District Court of Rhode Island was right in ordering his removal for trial under Section 1014, Revised Statutes.

If upon the trial it appeared that the place where the alleged crime was committed was not a place to which the penal laws of the United States applied, then the respondent was not guilty and would, of course, be acquitted.

The Circuit Court of Appeals has thus erroneously attempted in a *habeas corpus* proceeding to try the question of the guilt or innocence of the accused.

CONCLUSION.

The question is one of importance to the United States.

If the decision of the Circuit Court of Appeals is allowed to stand unreversed, it will constitute a dangerous precedent in all cases where the United States Government, with the consent of a State, acquires, occupies, and exclusively controls territory within the State for the purpose of carrying on military operations. *Defect of title may become a new defense for murder.*

The decision of this question is of special importance in the particular case here involved because of the fact that the authorities of the State of Washington have consistently abstained from exercising jurisdiction to apprehend and punish anyone implicated in the alleged crime. The case of *Concessions Company* v. *Morris*, decided by the Supreme Court of Washington, 186 Pac. Rep. 655, shows that the county authorities of Pierce County, by demurring to the petition in that case, admitted as a fact that during the year 1918 the United States had exclusive jurisdiction over Camp Lewis.

Moreover, if proceedings should be instituted by State authorities to punish the parties implicated in this homicide, the courts of that State might not feel bound by the decision of the Circuit Court of Appeals but would follow any decision rendered by this court.

Without expressing an opinion on the question whether or not the crime of murder was actually committed, a question which of course can only be determined by a jury, it is of great importance to those charged with the administration of the criminal law and of great public importance that men indicted for murder should not escape trial altogether because neither the State court nor the Federal court will exercise jurisdiction. This is the only court which can decide finally the important question here involved, which from the nation-wide discussion and comment which the crime has excited must be regarded as one of great public interest.

JAMES M. BECK,
Solicitor General.

SEPTEMBER, 1923.

○

No. 546

Supreme Court of the United States.

OCTOBER TERM, 1923.

WILLIAM R. RODMAN, United States Marshal,
Petitioner,

vs.

ROLAND R. POTHIER,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

DAVIS G. ARNOLD,
Counsel for Respondent.

PRINTED IN THE UNITED STATES BY B. H. TYRRELL, PRINTER, 206-8 FULTON STREET, NEW YORK.

INDEX.

APPENDIX.

I.

II.

III.

IV.

V.

VI.

VII.

TABLE OF CASES CITED.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1923.

WILLIAM R. RODMAN, United States Marshal,
Petitioner,

against

ROLAND R. POTHIER,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

I.

The respondent was indicted under Section 272 of the Federal Penal Code, for shooting Major Cronkhite on October 25, 1918, "within and on lands theretofore acquired for the exclusive use of the United States and under the exclusive jurisdiction thereof, and within the Southern Division of the Western District of Washington, within and on the Camp Lewis Military Reservation," and he was sought to be removed for trial under the indictment, fom Rhode Island to the State of Washington pursuant to Section 1014 of the United States Revised Statutes. In that proceeding it became the duty of the Court before which he was brought, to determine whether there was probable cause that an offense against the United States had been committed, and whether the Court to which the accused was sought to be removed had jurisdiction of the same.

The Circuit Court of Appeals has determined these questions in the negative. This case originally came be-

fore this Court on an appeal by Pothier from a decision of the United States District Court for Rhode Island directing his removal. By a decision rendered on March 12, 1923, *Pothier* v. *Rodman*, 261 U. S.—(43 Supr. Ct. Rep. 374), the record was transferred by this Court to the Circuit Court of Appeals for the First Circuit, on the ground that the question raised was not one directly appealable to this Court from the District Court, the objection raised being of a character which went to the merits, and not to the jurisdiction of the District Court of Rhode Island.

The Circuit Court of Appeals, in a careful opinion, which is appended hereto, proceeded to consider the question as to whether this was a proper case for removal under the statute, and the extent to which it could, in such proceeding, determine whether probable cause had been established showing that an offense against the United States had been committed.

That the Court possessed such power was determined in *Tinsley* v. *Treat*, 205 U. S. 20, *Price* v. *Henkel*, 216 U. S. 491, *Henry* v. *Henkel*, 235 U. S. 228, *United States* v. *Black*, 160 Fed. Rep. 431, and *Hastings* v. *Murchie*, 219 Fed. Rep. 83, 88, as well as in other cases cited in the opinion below.

Section 272 of the Federal Penal Code, which is the statute under which the indictment was found, refers to crimes and offenses punishable under the laws of the United States. The material provision reads

> "Third. When committed within or on any lands reserved or *acquired for the exclusive use of the United States, and under the exclusive jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State* in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building."

It is therefore an essential element of the offense, as is indicated also by the terms of the indictment, that the crime must have been committed on lands acquired for the exclusive use of the United States and under the exclusive jurisdiction thereof, or purchased or otherwise acquired by the United States by consent of the Legislature of the State in which the same shall be. Consequently if, in the removal proceedings, the proof negatived the existence of the essential element just mentioned, there was no probable cause for finding that a crime had been committed, and it was the duty of the Court to deny the application for removal.

The petition for the writ of certiorari totally ignores the character of these proceedings, and apparently proceeds on the theory that, because this question might be tried in the District Court for the Western District of Washington, the Federal Courts within the jurisdiction where the respondent was arrested cannot exercise the power conferred upon them by Section 1014 of the United States Revised Statutes.

The finding of an indictment is by no means conclusive (*Price* v. *Henkel*, 216 U. S. 491; *Tinsley* v. *Treat*, 205 U. S. 20). The duty of adjudication on the question of probable cause and of jurisdiction nevertheless rested upon the courts before which the respondent was brought. As was said by Mr. Justice Brewer in *Beavers* v. *Henkel*, 194 U. S. 73, 83, in language approved in *Tinsley* v. *Treat* and other cases, *supra*:

> "It may be conceded that no such removal should be summarily and arbitrarily made. There are risks and burdens attending it which ought not to be needlessly cast upon any individual. These may not be serious in a removal from New York to Brooklyn, but might be if the removal was from San Francisco to New York. And statutory provisions must be interpreted in the light of all that

> may be done under them. We must never forget that in all controversies, civil or criminal, between the Government and an individual the latter is entitled to reasonable protection. Such seems to have been the purpose of Congress in enacting Section 1014, Rev. Stat, which requires that the order of removal be issued by the judge of the district in which the defendant is arrested. In other words, the removal is made a judicial, rather than a mere ministerial act."

See also,

Greene v. *Henkel*, 183 U. S. 261.

The case of *Louie* v. *United States*, 254 U. S. 548, cited by the Government, was not one of removal from one district to another, as this is. There, Louie was indicted for killing an Indian within the limits of a reservation in Idaho, the indictment being found in the United States District Court in that State and the prisoner being tried in that court. During the course of the trial the question was raised as to whether, under the terms of the Federal statute, the District Court had jurisdiction of the crime charged and of the defendant's person. After a conviction, a writ of error was sued out to the United States Circuit Court of Appeals for the Ninth Circuit, where it was held that that Court had no jurisdiction to review the judgment of the District Court, and the writ of error was accordingly dismissed (264 Fed. Rep. 395). A writ of certiorari was then granted by this Court for the review of the judgment of the Circuit Court of Appeals, and it was held that the judgment of the District Court was not reviewable by direct writ of error from this Court, as had been contended in the Circuit Court of Appeals, but that it should go in the first instance to the latter court. The judgment of that court was therefore reversed and the case was remanded to it for further proceedings. When the case came before the Circuit Court

of Appeals in accordance with the mandate of this Court, the conviction was reversed on the ground that the Federal courts were without jurisdiction of the crime, and that the State courts had exclusive jurisdiction of it, regardless of the fact that the place where the crime was committed was within the boundaries of the Coeur d'Aléne Indian Reservation in Idaho (274 Fed. Rep. 47).

In the present case the question is not so much one of the jurisdiction of the Court, as it is of the jurisdiction of the sovereignty. It is not one relating to appellate procedure, but to the power of the Government of the United States to exercise exclusive jurisdiction in its broadest sense over the lands constituting the Camp Lewis Military Reservation. Consequently it comes within the decisions specifically applicable to removal proceedings and within the term "jurisdiction" as used in the decisions under Section 1014.

II.

The record shows that, at the time when Major Cronkite met his death, title to the Camp Lewis Reservation had not been acquired by the United States, and the jurisdiction of the State of Washington, as a sovereign state over the lands, had not passed out of it and into the Government of the United States. There was, therefore, a total absence of probable cause as to an essential element of the crime pleaded.

On October 25, 1918, the day when the alleged crime was committed, the United States concededly had no title to any part of the Camp Lewis Reservation. It had not even taken legal proceedings for the acquisition of the title. It had no contract under which it could claim the

title. It had paid no consideration for any part of the land. Not only was it without a deed, but a deed had at that time been refused. It was not until on or about October 1, 1919, that the United States acquired title to these lands. That was nearly a year after the commission of the alleged crime; when the authorities of Pierce County executed and acknowledged and caused to be recorded a deed of the premises, and Newton D. Baker, Secretary of War, approved and accepted it.

It is erroneously stated in the petition that on December 2, 1916, the Secretary of War, with the approval of the President, agreed with Pierce County, Washington, in consideration of the donation by that county to the United States of certain lands theretofore designated by the Secretary of War, the United States would establish thereon and maintain a permanent military reservation. That statement is repeated several times, but it misconceives the facts.

On December 2, 1916, the Secretary of War wrote a letter to "Stephen C. Appleby, Chairman Pierce County Committee,"—a self-constituted committee of citizens of Pierce County, to the effect that at a hearing conducted at the Secretary's office "there was discussed informally the proposition tentatively advanced to donate a tract of land to the United States as a site for a permanent mobilization, training and supply station, at or near American Lake in Pierce County, Washington." (*Rec.* p. 183).

This communication contained none of the elements of an agreement. It is not claimed that Mr. Appleby or its Committee of which he was the Chairman had any authority to contract for the county, and in fact he did not. At that time neither the United States nor the State of Washington, nor Pierce County, owned a foot of the land which constituted the proposed reservation. It belonged to many hundred private owners. It was neces-

sary to acquire their title. The United States did not undertake to purchase an inch of land for the purposes of the reservation or to institute condemnation proceedings to acquire the land or to pay any part of the cost of its acquisition; nor did Pierce County nor the State of Washington nor any land-owner agree to convey any land to the United States.

By Chapter 3 of the Laws of 1917 the Legislature of the State of Washington authorized Pierce County to acquire, by condemnation or otherwise, lands in that county aggregating approximately seventy thousand acres, at such location or locations as might have been or might be thereafter from time to time selected or approved by the Secretary of War, and to convey such lands to the United States. The county was authorized to incur a liability to the extent of $2,000,000 to acquire the lands, and was given power of condemnation in order to secure the title to the lands. Careful provision was made in the act as to the manner in which the lands acquired were to be conveyed to the United States and as to how the exclusive jurisdiction over these lands was to pass from the State of Washington to the United States. This was accomplished by Section 20 of the act, which reads as follows:

> "Pursuant to the Constitution and laws of the United States * * * the consent of the legislature of the State of Washington is hereby given to the United States to acquire, by donation *from Pierce County, title to all lands herein intended to be referred to, to be evidenced by the deed or deeds of Pierce County signed by the chairman of its board of county commissioners and attested by the clerk of such board under the seal of such board*, and the consent of the State of Washington is hereby given to the exercise by the Congress of the United States of exclusive legislation in all cases whatsoever over such tracts or parcels of land *so conveyed to it: Provided, upon such conveyance be-*

ing concluded a sufficient description by metes and bounds and an accurate plat or map of each such tract or parcel of land be filed in the auditor's office of Pierce County, together with copies of the orders, deeds, patents or other evidences in writing of the title of the United States: * * *."

As has already been said, it was not until October 1, 1919, that a deed was executed by Pierce County in the manner set forth in this statute, or in any other manner, conveying the lands constituting Camp Lewis Reservation to the United States. It was not until then that any conveyance was approved and accepted on behalf of the United States. It was not until November 15, 1919, that the deed was filed in the auditor's office of Pierce County with the map attached to it, as required by the terms of the statute.

In the absence of this legislation, there can be no possible question but that the courts of the United States would have had no jurisdiction over the crime of murder committed on the tract of land referred to. It is only by virtue of the cession of jurisdiction accomplished by this section that such jurisdiction was created. The terms of the act, however, are specific as to when and how such cession was to become effective. *It would only be when the United States acquired the title to the lands referred to in the act. That title could only be acquired by the execution of a conveyance to the United States from Pierce County, after the later had acquired the title to the lands in question.*

The nature of the conveyance was expressly specified. It was to be evidenced by the deed or deeds of Pierce County, signed by the Chairman of its Board of County Commissioners and attested by the Clerk of said Board under the seal of such Board. Until the execution of the conveyance it was not determined what lands were to be conveyed or accepted, what exceptions and what reservations were to be created, what conditions were to be im-

posed, what was to be included or excluded; in short, whether a grant would be made or if made whether it would be acceptable. In the meantime sovereignty over this large tract of land, lying with the State of Washington was not to rest *in nubibus*. It was not to be "No Man's Land," for jurisdictional purposes. Jurisdiction would follow the title. That was certainly not in the United States until conveyed in the manner prescribed by statute. Until such conveyance exclusive jurisdiction continued to reside in the State of Washington.

The execution of this conveyance was clearly a prerequisite to the acquisition of title to these lands by the United States, and to the cession of jurisdiction over these lands by the State of Washington to the United States. That controlling act not having taken place until more than a year after the alleged offence, the State alone had jurisdiction over any offense committed upon those lands, while the title either still remained in the original owners or was vested in Pierce County.

Land is "conveyed" when legal title thereto is deeded. Title cannot be vested under a deed before it is delivered and accepted.

Abendroth v. *Town of Greenwich*, 20 Conn. 356, 365.
Fairfax v. *Lewis*, 11 Leigh, 233, 248.
Langmede v. *Weaver*, 65 Ohio St. 17.
Jones v. *Davis*, 22 Wis. 421, 424.
McDonald v. *Campbell*, 2 Serg. & R. 473, 474.
Van v. *Edwards*, 135 N. C. 661.
Jackson ex dem Hopkins v. *Leake*, 12 Wend. 105.
Mitchell v. *Bartlett*, 51 N. Y. 447.
Kochler v. *Hughes*, 148 N. Y. 507.

An examination of the deed shows that it contains numerous exceptions, reservations and conditions, and

that the entire conveyance was made subject "to the express condition that if the United States should ever cease to maintain the tract above described for the uses above named, title to the lands above described will revert to said Pierce County without further act by it to be performed." (*Rec.* pp. 148-180.)

Not only was there no contract between the United States and the State of Washington or with Pierce County respecting the seventy thousand acres, which were considered for use as a military reservation, but neither the United States nor the State, nor the County, assumed any obligation to each other. The letter of December 2, 1916, was clearly tentative and dependent upon conditions. The necessity of a deed conveying a valid title was, from the beginning, regarded as a *sine qua non* (*Rec.* pp. 184, 185).

The correspondence between the Secretary of War and Mr. Lyle, who had charge of the condemnation proceedings for Pierce County, likewise demonstrates this. This correspondence took place in June and July, 1918. At that time Pierce County had secured title in condemnation proceedings to 36,930 acres only of the 70,000 acres contemplated. In the letter of Mr. Lyle of June 27, 1918, referring to the letter of December 2, 1916, which provided "that Pierce County shall tender a valid deed to the lands intended to be donated," and that the title so conveyed to the United States must be approved by the Attorney-General, he said:

> "The terms of the proposition of December 2, 1916, and the provisions of Chapter 3, Laws of 1917, State of Washington, provide that the conveyance shall be made *by one deed*. As title to the entire area has not as yet been secured, *a deed cannot be tendered at this time*." (*Rec.* p. 64.)

In his answer dated July 1, 1918, the Secretary of War, after referring to an opinion from the Judge Advocate-General, said (*Rec.* p. 76):

"In accordance with the opinion, you are advised that the manner of conducting the proceedings in the above case which you have submitted is satisfactory to the War Department, *and that if the subsequent proceedings are conducted in the same manner and are brought to a conclusion prior to the expiration of the existing war,* AND THE DEED TO THE ENTIRE TRACT IS TENDERED BY PIERCE COUNTY *in accordance with the understanding with the War Department, and as authorized and directed by the act of the Legislature under which the proceedings are brought, I will accept the said deed on behalf of the United States.*"

It is thus apparent that the Government had not accepted a deed of any part of the land constituting the Camp Lewis Reservation, that it had declined to do so, and that as a condition precedent of the acceptance of any deed, the Secretary of War insisted that the deed should cover the entire tract of 70,000 acres, and should be "as authorized and directed by the act of the Legislature." It was only then that the Secretary of War was willing, on behalf of the United States, to accept a conveyance of title to the lands in question.

In order, therefore, that the United States might acquire jurisdiction over this tract, it was necessary that it should acquire the title thereto and the consent of the Legislature of the State of Washington to exercise sovereignty over it. Until the acquisition of title and the consent of the State that sovereignty should be exercised by the Federal Government, the State sovereignty continued to be exclusive.

The authorities are uniform on this proposition. The subject was carefully considered in *Fort Leavenworth R. R. Co.* v. *Lowe*, 114 U. S. 538, where Mr. Justice Field said:

"The consent of the States to the purchase of lands within them for the special purposes named

> is, however, essential under the Constitution to the transfer to the general government, *with the title*, of political jurisdiction and dominion."

To the same effect is *Chicago, R. I. & P. Ry. Co.* v. *McGlynn*, 114 U. S. 542.

Practically identical in its facts with the present, is the leading case of *People* v. *Godfrey*, 17 Johns. 225, which was fully approved in *Fort Leavenworth R. R. Co.* v. *Lowe, supra.*

Similar cases are:

> *United States* v. *Bateman*, 34 Fed. Rep. 86, cited in *United States* v. *Lewis*, 253 Fed. Rep. 469, 472.
> *United States* v. *Penn*, 48 Fed. Rep. 669.
> *In re O'Connor*, 37 Wis. 379.
> *United States* v. *Tucker*, 122 Fed. Rep. 518.
> *People* v. *Humphrey*, 23 Mich. 471.

As indicative of the soundness of the decision rendered by the Circuit Court of Appeals, in addition to the opinion of that court, there will be found in the Appendix:

(1) A telegram from the Attorney-General of the United States to the United States Attorney at Seattle, recognizing the absence of Federal jurisdiction in this case;

(2) An opinion of the Prosecuting Attorney of Pierce County, Washington, *asserting jurisdiction of the State and the absence of Federal jurisdiction*, but concluding that there was no evidence of the commission of a crime by anybody as the cause of the death of Major Cronkhite; or that in any event Rosenbluth or the respondent were chargeable with it;

(3) A letter from Hiram M. Smith, who investigated the question of jurisdiction and communicated his

views on the subject to the Prosecuting Attorney of the State of Washington;

(4) A carefully reasoned opinion by Mr. Smith on the subject;

(5) The opinion of Commissioner Hitchcock determining in *United States* v. *Rosenbluth* that the State of Washington had exclusive jurisdiction over the alleged crime involved in this case.

Concessions Co. v. *Morris*, 109 Wash. 65, cited for the Government, has no bearing upon the present case. That was an action for an injunction against Pierce County and its officers to restrain the collection of a tax upon real and personal property for the year 1918 upon a barber shop and its equipment located at Camp Lewis. The complaint alleged that the plaintiff erected the building sought to be taxed on the military reservation and "that the reservation is the property of the United States." A demurrer was interposed to this complaint, and its effect was stated by Mr. Justice Mackintosh as follows:

> "The respondents, by demurring, admit the appellant's allegation that the title to the reservation is in the Federal Government, and that therefore the provisions of the act of 1917, hereinafter referred to, relating to the acquisition of such title have been complied with."

The Court, therefore, was precluded from considering aught but the facts conceded to be true by the interposition of the demurrer, and it did not, as it could not, take into account anything *de hors* the record.

The suggestion of the Solicitor General, that under the decision of the Circuit Court of Appeals "defective title may become a new defense for murder," is not a fair criticism. Here there was no question as to a "defect" of title. There was a total absence of title in the United States to the lands constituting Camp Lewis

Reservation. The transfer of title to the United States was a *conditio sine qua non* of a transfer of exclusive jurisdiction from the State to the United States. That condition cannot be nullified by an epigram.

III.

There is no merit in the contention that the United States, with the consent of the legislature of Washington, exercised exclusive de facto jurisdiction over the territory embracing the locus of the crime.

This contention is based on the theory that Camp Lewis had been practically completed before the death of Major Cronkhite and that before its occurrence the training of soldiers had been in progress within its area; in other words, that the United States was in occupancy of the lands. That did not, however, extinguish the sovereignty of the State of Washington over the lands included within the camp. Its exclusive sovereignty could only be terminated by a strict compliance with the terms of the statute, which its Legislature had enacted. If the State had directed the County not to make the conveyance, if the latter after full consideration had concluded that it would not condemn the lands selected, or, because of the expense involved, that it would not carry out the project, the Government of the United States could not have sued the State to compel a conveyance; certainly not to abdicate its sovereignty and to turn it over to the United States Government. Mere occupancy of the land without objection, or with the tacit consent of Pierce County, cannot be regarded as a compliance with the conditions imposed by the statute with respect to the transfer of sovereignty.

In *People* vs. *Godfrey*, and *United States* vs. *Bateman, supra,* it was decided that mere occupancy with tacit State consent of lands within the State for Federal military objects, does not oust the State of its jurisdiction over any crime committed on such lands or confer it upon the United States. Jurisdiction cannot be acquired tortiously or by disseisin of the State, or by mere occupancy.

In *Eminent Domain of States* (1855), 7 Opinions of Attorney General, 573, it was decided that mere ownership and occupancy by the United States of land within a State do not suffice to oust the jurisdiction of the State, even when such occupancy is with the full knowledge and tacit consent of the State.

In *In re O'Connor*, 37 Wis., 384, the fact that the United States had become the actual proprietor of land situated within the limits of the State by purchase was held in no way to affect the paramount authority of the State in the absence of a cession of jurisdiction in the manner directed by the Legislature.

The grant of exclusive jurisdiction united with the cession of territory, in order to be effective as a termination of State jurisdiction, must be the free act of the State.

United States vs. *Bevans*, 3 Wheat, 388.

A state has the right to limit the extent of the tract over which it will cede jurisdiction. Even had the United States purchased additional lands, jurisdiction would remain in the State as to the excess.

Cession of State Jurisdiction (1857), 8 Opinions Attorney General, 388.

In *Opinions of the Judge Advocate General*, we find one designated 015.7, rendered on Feb. 6, 1918, almost contemporaneously with the occurrences in the present case, where it was decided:

> "Lands leased by the Government for cantonment sites are not within the exclusive jurisdiction of the United States within the provisions of clause 17, sec. 8, Article 1 of the Constitution or of the several State statutes ceding jurisdiction to the Federal Government of land purchased for military purposes. Accordingly, the State retains its jurisdiction within the cantonment site, subject to the restriction that it cannot hamper the control or use of such site by the Federal Government. Thus a murder committed within the cantonment site would be triable in the State courts, although if committed by a person subject to military jurisdiction being then triable also by a general court-martial the usual rule applicable to concurrent jurisdiction would apply."

Here there is no question of a court-martial, but merely as to the exercise of criminal jurisdiction by the United States District Court.

Even had there been an agreement to convey the lands intended for a military reservation, that would not have been the equivalent of a conveyance, if conveyance was certainly a condition precedent to the ousting of the State from its sovereign jurisdiction over this territory. The distinction between an agreement to convey and a conveyance is well recognized.

In *Chavez* vs. *Bergere*, 231 U. S., 482, this was clearly pointed out by Mr. Justice Van Devanter.

Nor does this case come within the decisions relating to Government grants. It will be found that, in practically all of them, statutes relating to railroad grants contained language equivalent to that considered in *Schulenberg* vs. *Harriman*, 21 Wall., 44, *Deseret Salt Co.* vs. *Tarpey*, 142 U. S., 241, and other cases, "that there be and is hereby granted" the land specified. These naturally were grants *in praesenti*. Nothing remained to be done. The statute itself constituted a conveyance.

In the present case, however, everything remained to be done when Chapter 3 of the Laws of 1917 was enacted.

The State owned none of the land which was to be used for the Camp Lewis Military Reservation. Neither did the county own any land intended for that purpose. It had to be first acquired by the county by condemnation proceedings, and after it had been so acquired it was contemplated that a conveyance, executed in a particular manner, was to be made and delivered to the United States and accepted by it before title would pass or the State sovereignty would be ceded to the United States. That did not occur until after October 1, 1919.

If the *de facto* exercise of exclusive jurisdiction could extinguish the sovereignty of the State over a part of its territory, then, by the same token, it could be deprived of its jurisdiction over the whole of its territory and could be swallowed up by the National Government.

Moreover, in this case there is no evidence even of the *de facto* exercise of exclusive jurisdiction by the United States over the reservation prior to October 1, 1919. The mere fact of possession by permission of Mr. Lyle, as counsel representing Pierce County in the condemnation proceedings, cannot be contorted into the "*de facto* exercise of exclusive jurisdiction." If so, then permission by the Mayor of Boston for the occupancy of Boston Common by a regiment of United States Marines, for the maintenance of a camp or for conducting military manoeuvers, would operate as a transfer of the exclusive jurisdiction of the Commonwealth of Massachusetts over the land so occupied.

The case of *Holt* v. *United States*, 218 U. S. 245, cited for the Government, in no manner resembles the present case. There the plaintiff in error was indicted for a murder committed "within the Fort Worden Military Reservation, a place under the exclusive jurisdiction of the United States." During the course of the trial several exceptions were taken to the admission and sufficiency of evidence. One of them was an attempt to raise technical difficulties to a fact, which in the language of Mr. Justice

Holmes, "no one really doubts, namely, that the band barracks, the undisputed place of the crime, were within the exclusive jurisdiction of the United States." A witness testified that they were within the enclosure of Fort Worden under military guard and control, from which all unauthorized persons were excluded, and that he knew that the fence was coincident with the boundaries shown on a map objected to but admitted. He identified the band barracks as described in certain condemnation proceedings, and the State of Washington had assented by statute to such proceedings and Congress had authorized them. The deeds and condemnation proceedings under which the United States claimed title were introduced. There was nothing before the Court to question the correctness of the testimony given by way of identification of the locus where the crime was committed as being within the property conveyed. There could, therefore, have been no question in that case but that the crime was committed on lands over which the United States had exclusive jurisdiction.

Here, however, there is no pretence that the United States had any deeds, at the time of Cronkhite's death, of any part of Camp Lewis. On the contrary, it is shown that the title to the reservation was at that time partly in the County of Pierce and to a large extent in private owners, whose title had not been extinguished, and that it was not until by deed dated October 1, 1919, and recorded November 15, 1919, that there was any semblance of title in the United States, or any compliance with the conditions imposed by Chapter 3 of the Laws of 1917 with respect to the passing of sovereignty and jurisdiction to the United States over these lands.

IV.

This is not a case where men indicted for murder are to escape trial altogether because neither the State Court nor the Federal Court will exercise jurisdiction, as contended by the Government.

The Attorney-General of the United States, after concluding that the Federal Court had no jurisdiction, directed the United States Attorney for the State of Washington to submit the facts to the Prosecuting Attorney of Pierce County, and he did so. *The Prosecuting Attorney for Pierce County recognized that the State had jurisdiction*, and then embarked on a most painstaking inquiry into all of the facts brought to his attention, and concluded that there was nothing to justify the prosecution of the persons charged with the crime. His analysis of the alleged proofs submitted to him is a matter of public record.

V.

It is respectfully submitted that this is not a case for the granting of a Writ of Certiorari within established precedents, and that it should be denied.

DAVIS G. ARNOLD,
Counsel for Respondent.

Appendix.

I.

A telegram was sent by the Attorney General of the United States to the United States Attorney at Seattle with reference to the prosecution of Pothier and Rosenbluth for the alleged murder of Major Cronkhite as follows:

Washington, D. C., Mar. 30, 1921.

Replying to yours 28th Cronkhite case. Examination War Department record Pidd case reveals reversed because improper evidence admitted. Question jurisdiction not considered. *Agree with you no federal jurisdiction. You authorized confer with state prosecutor. Give him benefit information now in your possession. Suggest to him issuance of state warrant for both parties and start extradition proceedings.* Entire file covering investigation will be forwarded bureau office at Seattle for delivery to state prosecutor. Bureau will continue investigation and cooperate fully with state authorities. You authorized do likewise. Please keep this phase of case confidential—not permit same to get to press until state authorities think advisable. Rosenbluth now under $20,000 bail New York. Pothier still in custody, Providence. Wire action taken.

DAUGHERTY.

II.

The United States Attorney thereupon turned over to Hon. J. W. Selden, the Prosecuting Attorney of Pierce County, Washington, the information in his possession and thereafter the latter filed in his office an elaborate report in which he concluded that there was no evidence justifying prosecution. In the course of his report he said:

"In September, 1921, this office received a letter from Hiram W. Smith of Richmond, Virginia. In the letter was inclosed a copy of a letter written by him to R. Watkin Ellerson of the same city, wherein he discusses and determines the question of jurisdiction over the Camp Lewis site at the time Major Cronkhite met his death. *His language is so persuasive and forceful that this office adopts his conclusions with reference to the question of jurisdiction and submits both letters as a part of this report.*"

"It may not be out of place to note here that had this office following the suggestion made by the Attorney General in the above telegram, issued warrants and started extradition, one of the greatest mistakes in the course of Pierce County criminal procedure would have been made. The expense to the State of Washington would have been heavy, and had the extradition terminated successfully, the County of Pierce would have had two men on its hands, against one of whom (Captain Rosenbluth) there would have been no legal evidence and the other (Pothier) not a sufficient amount of evidence to have secured a conviction."

III.

Robert H. Pollard
Hiram M. Smith

Bell Telephone
Madison 3572

LAW OFFICES
POLLARD & SMITH
825-827 American Bank Building
Richmond, Virginia.

September 21, 1921.

Hon. J. W. SELDEN,
Tacoma, Washington.

My Dear Sir:

On account of my personal interest in General A. Cronkhite, I have become very much interested in the

matter which now is occupying all of the attention of the general, that is the killing of his son at Camp Lewis, in your State, in October, 1918.

As you know, General Cronkhite commanded the 18th Division which was composed mainly of Virginia and Pennsylvania troops, that the organization of the division was completed by General Cronkhite while he was stationed at Camp Lee, in this State. Therefore, we Virginians have a great deal of affection for him and confidence in him.

The evidence which General Cronkhite has in his possession is to my mind conclusive of the fact that Major Cronkhite was killed and did not die by his own hand.

The attorney general of the United States, I am informed, is of the opinion that the federal courts are without jurisdiction to try Major Cronkhite's assailants and the two persons who have been charged with the murder and arrested have been released.

Until recently I was the United States District Attorney for the eastern district of Virginia and had had considerable experience during the war period in acquiring land for the government and in dealing with the question of the government's jurisdiction thereover.

I think that General Cronkhite was convinced that the courts did have jurisdiction and the question was through mutual friends submitted to me for an opinion. My confidence is that the federal courts are without jurisdiction, and I am enclosing a copy of a letter which I wrote to Mr. H. Watkins Ellerson of this city, in which I have discussed the matter at some length. I send you this with the hope that it may be of some interest to you.

I sincerely trust that you will not think that by thus addressing you, I have in mind any thought of criticism. I send it as a citizen to a public official, and without any

thought of attempting to compel any conclusion or action on your part.

With great respect, I am very truly yours,

(Signed) HIRAM M. SMITH.

IV.

MR. H. WATKINS ELLERSON,
c/o Albermarl Paper Company,
Richmond, Virginia.

My Dear Watt:

You present the following proposition:

A is killed at and within the territorial limits of Camp Lewis, State of Washington. Camp Lewis is a mobilization camp used and occupied by the Federal Government for military purposes. Have the Federal Courts jurisdiction to try and punish the offenders?

The question is answered, of course, by a determination of the extent to which the Federal Government had acquired jurisdiction over the actual land constituting Camp Lewis.

Murder as defined in the Federal Penal Code of 1910 is punishable in the Federal Courts "when committed within or on any lands reserved or acquired for the exclusive use of the United States, and *under the exclusive jurisdiction thereof*" * * *

On the second day of December, 1916, the secretary of war, acting under authority of an Act of Congress, approved on the 29th day of August, 1916 (39 Stats., 623), agreed to accept from the County of Pierce, State of Washington, approximately 70,000 acres of land to be used as a permanent mobilization, training and supply station for the army of the United States. The proposed site was not at that time owned by the County of Pierce, but pursuant to said agreement was subsequently ac-

quired by the County of Pierce under the authority and in accordance with the provisions of an Act of the Legislature of the State of Washington approved January 27, 1917.

On the 25th of October, 1918, when A was killed the County of Pierce had acquired by condemnation something over 33,000 acres of the contemplated land, and this proportion thereof was in actual use as a mobilization camp by the army of the United States. The Act of the Legislature of the State of Washington referred to above provided for the conveyance of the land by deed or deeds from Pierce County, acting through its proper officers, to the United States. This deed was not actually executed or delivered until the first day of October, 1919. It thus appears, having in mind the provision of the Penal Code above quoted, that the land upon which the murder was done had actually been "reserved and acquired for the exclusive use of the United States," but was it "under the exclusive jurisdiction thereof?"

The powers of the Federal Government are given and prescribed by the Constitution and beyond the authority therein contained, it may not go. Specially the authority to exercise exclusive legislation over any "place" is contained in Article I, Section 8, Clause 17 of the Constitution as follows:

> "To exercise exclusive legislation * * * over all places purchased by the consent of the legislature of the state in which the same shall be for the erection of forts, magazines, arsenals, dock-yards and other needful buildings."

This clause has been construed to include the land acquired for the purpose of any governmental use. However, the Federal Government, acting through one of its executive departments, cannot by its single act obtain "exclusive jurisdiction" over any land which may have been "reserved or acquired for the exclusive use of the United States."

The Constitution itself so provides and makes necessary to the acquisition of exclusive jurisdiction the consent of the sovereign state in which the land may be.

This phrase "within the exclusive jurisdiction of the United States" is well understood as applying to the crimes which are committed within the premises, grounds, forts, arsenals, navy yards and other places within the boundaries of a state, or even within a territory over which the Federal Government has by cession, by agreement or by reservation, exclusive jurisdiction (Ex parte Gonshay'ee, 130 U. S. L., Ed. 973, 986).

This principle is well expressed in Volume 4, Ency. of U. S. Supreme Court Reports, 153:

> "As to the public lands held by the United States within state limits the right and title of the United States thereto is based upon the deeds of cession made to the Federal Government by the state within whose limits the lands originally were and upon the statutes connected with them, and not upon any municipal sovereignty which the United States may be supposed to possess or to have reserved by compact with new states for that particular purpose. The provisions of the Constitution of the United States, Article 1, Section 8, Clause 17, shows that no such power can be exercised by the United States within a State. Such a power is not only repugnant to the Constitution, but it is inconsistent with the spirit and intention of the deeds of cession."

There can be no question that the federal government has or had authority to accept a donation of such land as is in contemplation. See the acts of Congress approved July 2, 1917, and as amended April 11, 1918, to be found in 40 Stats., 241 and 518, respectively.

Having in mind then the fact that the state in which the land is must concur in the right of the federal government to exercise "exclusive legislation," your inquiry must be answered by a determination of the question of whether or not the State of Washington had ceded such

authority. This can be answered in my judgment only in the *negative*.

The act of the legislature of that state above referred to which authorized the County of Pierce to acquire the needed land and prescribed the form of procedure by which it should be acquired also provided:

> Section 20. "Pursuant to the Constitution and laws of the United States, and especially to paragraph 17 of Section 8 of Article 1 of such Constitution the consent of the Legislature of the State of Washington is hereby given to the United States to acquire, by donation from Pierce County, title to all lands herein intended to be referred to, to be evidenced by the deed, or deeds of Pierce County, signed by the chairman of its board of County Commissioners and attested by the Clerk of such Board under the seal of such Board, and the consent of the State of Washington is hereby given to the exercise by the Congress of the United States of exclusive legislation in all cases whatsoever over such tracts or parcels of land so *conveyed* to it."

I am, therefore, of the opinion that the courts of the federal government of the State of Washington had no authority to try or punish the person or persons who were responsible for the death of A.

Yours very truly,

(Signed) HIRAM M. SMITH.

V.

UNITED STATES DISTRICT COURT,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA,

against

ROBERT ROSENBLUTH,
Defendant.

After hearing counsel, Commissioner Hitchcock made the following decision:

I find:

That the crime alleged to have been committed took place on October 25, 1918, on lands constituting Camp Lewis Military Reservation, which lands were to be conveyed by one deed pursuant to Chapter 3 of the Laws of 1917 of the State of Washington, and which deed was to be accepted by the Secretary of War.

That Camp Lewis Military Reservation was used by the United States as a cantonment and for the training of troops on and prior to the 25th day of October, 1918.

That the deed of conveyance to the United States was executed and accepted on October 1st, 1919, and recorded in the office of the Auditor of the County of Pierce, Washington, on November 15, 1919.

With these findings of fact, I am prepared to announce my disposition of this case. It will undoubtedly appear to be illogical and inconsistent, yet under all the circumstances, it perhaps presents the best method of dealing with it. I agree entirely with every contention made by Mr. Marshall, defendant's counsel, without

qualification or reservation. In my opinion the United States District Court in the State of Washington, where the indictment against the defendant was found, had no jurisdiction whatsoever of the offense charged against him. The alleged killing of Major Cronkhite did not take place on any lands which at the time of the occurrence were under the exclusive jurisdiction of the United States. The State of Washington still possessed exclusive and sovereign jurisdiction over them. So far as any lands had on October 25, 1918, the date of the alleged offense, been acquired for Camp Lewis, the title was vested in Pierce County and not in the United States. Title and jurisdiction could only pass to the Federal Government in compliance with the conditions prescribed by Chapter 3 of the Laws of 1917 of the State of Washington, and in the manner provided by that statute. Until then the sovereign jurisdiction of the State of Washington continued undisturbed. It was not until the Chairman of the Board of Commissioners of Pierce County executed the deed to the entire tract in accordance with the terms of the statute and in compliance with the other requirements prescribed, that the United States acquired title to the lands or jurisdiction over them. It was not until then that the State of Washington parted with such jurisdiction and abdicated its sovereignty over them. That did not occur, at the earliest, until October 1, 1919, about a year after the death of Major Cronkhite. Therefore, in my judgment, if a crime was committed at Camp Lewis on October 25, 1918, the State of Washington had exclusive jurisdiction to deal with it. The United States was at that time entirely devoid of such jurisdiction.

I repeat that I have not the slightest doubt that the Federal courts have no jurisdiction over the offense, assuming that one was committed, and the only testimony adduced before me as to the tragedy itself tended to show the innocence rather than the guilt of the defendant.

Nevertheless, I feel that sitting as a commissioner, who is merely an appointive officer, I should not undertake to pass on this most important question of jurisdiction. It should be determined by a court. Were I a judge, I would not have the slightest hesitation to deny the application for the defendant's removal on the grounds which I have mentioned. But since I am not, the jurisdictional question should be determined by a court. For that reason only, I now direct the matter placed before a District Court Judge, and to facilitate a prompt judicial determination of the fundamental question of jurisdiction, I am prepared to return to the United States District Court for the Southern District of New York the entire record, including the indictment, the testimony and the exhibits adduced before me.

Mr. Selig:

Mr. Commissioner, I wish to bring up again the Concessions Case. This is a very plain case.

Commissioner Hitchcock:

I have also considered that, and I believe that the contention of Mr. Marshall is well founded that the case is not applicable. It was in that case submitted on demurrer thus admitting the allegation that the title was in the United States, so the Court necessarily made its decision on the record before it. Here the defendant has definitely raised the question of title and consequent jurisdiction and both his citations of law and the exhibits introduced in evidence, establish that the jurisdiction was in the State of Washington.

Mr. Selig:

But in that case the Court gave its opinion dehors the demurrer.

Commissioner Hitchcock:

I cannot see that. The United States cannot invade the sovereignty of a State except by its consent. Under the statute relating to the cession of jurisdiction to the United States by the State of Washington that we have before us, there is no doubt in my mind that at the time of the alleged crime, jurisdiction was clearly in the State of Washington and whether or not a crime was committed is a matter that should be tried in the Courts of that State.

Mr. Selig:

As long as the Commissioner has decided as he has, would it not be the best way for the Commissioner to make a return, attach the records and exhibits here, and if you will annex to that return the entire records, the exhibits, the statements of the Commissioner and any other proper documents and certify them to the District Judge, I believe we could have a speedy determination.

Mr. Marshall:

I agree to that procedure.

May I call to the attention of your Honor that really this matter has not been decided by any Judge. There was merely a presentation of the case to the grand jury by the District Attorney and an indictment followed.

Commissioner Hitchcock:

But of course the Judge recorded and filed the indictment.

Mr. Marshall:

That he did as a matter of course. No question of jurisdiction was raised before him; nor could it have

been, the defendant not being before the Court. The first opportunity to raise the jurisdictional question has been in the present proceeding.

Commissioner Hitchcock:

Nevertheless, I feel that this case ought to be decided by a District Judge. In the strongest terms I wish to repeat in my opinion that the Federal Court in the State of Washington had no jurisdiction and I will so certify in my statement to the District Judge.

The foregoing is a correct transcript of the proceeding had before me on January 4, 1923.

SAMUEL M. HITCHCOCK,
U. S. Commissioner,
Southern District of New York.

VI.

Later, after conferring with the Court, the following decision was rendered by the Commissioner and no further proceedings have been taken for the removal of Rosenbluth:

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA
against
ROBERT ROSENBLUTH,
Defendant.

Since the hearing before me on the 4th day of January, 1923, efforts have been made to bring this matter before the Court, or one of the Judges of the Court for review, in accordance with the suggestion made before me at that time, but there seemed to be difficulties in the way of doing so.

In the case of a holding and a commitment in removal proceedings, relief may be obtained by writs of habeas corpus and certiorari.

In the event of a dismissal of such complaint before a Commissioner, there seems to be no right of appeal, however, there seems to be no reason why a proceeding de novo could not be instituted inasmuch as the hearing before the Commissioner can in no sense result in a final determination of the issues involved.

It therefore devolves upon me at this time to decide this matter according to my best judgment, which I have already expressed upon the record at the last hearing, and in accordance therewith I find that the Federal Court in the State of Washington has no jurisdiction in the premises and I therefore deny the Government's petition to remove the defendant to the Western District of Washington for trial upon the indictment there found

and hereby dismiss the complaint herein, and order that the bail heretofore given by the defendant in this proceeding be discharged.

Dated, N. Y., Feb. 13th, 1923.

SAMUEL M. HITCHCOCK.

VII.

The following is a copy of the opinion rendered by the United States Circuit Court of Appeals for the First Circuit in the proceedings for the removal of Pothier from Rhode Island to the State of Washington.

UNITED STATES CIRCUIT COURT OF APPEALS,

FOR THE FIRST CIRCUIT.

OCTOBER TERM, 1922.

No. 1629.

ROLAND R. POTHIER,
PETITIONER, APPELLANT,
v.
WILLIAM R. RODMAN, UNITED STATES MARSHAL,
RESPONDENT, APPELLEE.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF RHODE ISLAND.

BEFORE BINGHAM, JOHNSON AND ANDERSON, JJ.

OPINION OF THE COURT.

JUNE 21, 1923.

BINGHAM, J. The appellant, Roland R. Pothier, was indicted in the District Court for the Southern Division of the Western District of the State of Washington on the thirteenth day of October, 1922, for the deliberate murder, with malice aforethought, of Alexander P. Cronkhite on the twenty-fifth day of October, 1918, "within and on land theretofore acquired for the exclusive use of the United States and under the exclusive jurisdiction thereof and within the Southern Division of the Western District of Washington, to wit, within and on the Camp Lewis Military Reservation," contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States. On October

19, 1922, an affidavit (Exhibit D) was filed by John J. Daly before the United States Commissioner for the District of Rhode Island wherein it was charged that Pothier had been indicted in the District Court for the Southern Division of the Western District of Washington for the wilful murder of Alexander P. Cronkhite on "the 25th of October, 1918, at, to wit, Camp Lewis Military Reservation, within the Southern Division of the Western District of Washington," . . . in violation of Section 275 of the Penal Code of the Revised Statutes of the United States"; that a bench warrant on said indictment had been issued from said District Court against him, upon which a return had been made by the United States Marshal of said District that he was unable to find the defendant; and that said Pothier had theretofore "fled from said Southern Division of the Western District of Washington and entered and is now in the State of Rhode Island, in the District of Rhode Island." Although the affidavit (Exhibit D) did not ask that a warrant issue for his apprehension, such a warrant was issued by the Commissioner on the nineteenth day of October, 1922, reciting that John J. Daly "had made a complaint in writing under oath before me" and setting forth the matter therein referred to as stated in the affidavit, on which the appellant was arrested and brought before him "to answer the said complaint." What hearing, if any, was had and what evidence, if any, was offered before the Commissioner the record does not show further than it recited in the warrant of commitment, which was issued by the Commissioner on the nineteenth day of October, 1922, committing him to jail, to wit: that "after an examination being made this day held by me, it appearing that said offence had been committed, and probable cause being shown to believe said Roland R. Pothier committed said offence as charged." On the sixth day of December, 1922, the appellant petitioned the District Court of Rhode Island for a writ of

habeas corpus, alleging, among other things, that the order of commitment was absolutely void and that he was confined and deprived of his liberty in violation of the constitution and the statutes of the United States, and praying that he be brought before the Court for hearing and that a writ of certiorari issue to the Commissioner directing him to certify to the court "all the proceedings which took place before him and all the evidence that was offered before him in said proceedings, which resulted in the issue of said commitment." On the seventh day of December, 1922, citations were issued and served requiring the marshal to produce the appellant before the court for hearing on the eleventh day of December, 1922, and show cause why said petition should not be granted, and directing the Commissioner to certify to the court all the proceedings had before him and all the evidence offered in said proceedings. On December 6, the United States district attorney filed a petition asking for an order directing the removal of the appellant to the Southern Division of the Western District of Washington, agreeably to the provisions of Section 1014 of the Revised Statutes of the United States. On this petition the court, on the seventh day of December, 1922, issued a citation, returnable December 11, 1922. On December 11, 1922, a hearing was had upon the petition for a writ of *habeas corpus* and for a writ of *certiorari* and on the petition for an order of removal. Evidence having been offered in support of the respective contentions of the parties, the court took the matter under advisement. On January 11, 1923, the District Judge filed an opinion in which he stated:

> "It appearing that the indictment was by a court of competent jurisdiction, that there was probable cause for his commitment by the commissioner, and that his imprisonment, restraint and detention were in accordance with law,—
>
> The petition is denied."

On the same day the court also filed an opinion with reference to the petition for removal in which he directed that a warrant for removal issue in accordance with the prayer of the petition, it having been ruled by the court that "the defendant has failed to overcome the *prima facie* case made by the indictment, and that the evidence fails to show the want of probable cause."

An appeal was taken directly to the Supreme Court, but, inasmuch as the question at issue did not relate to the jurisdiction of the District Court of Rhode Island but went to the merits of the controversy, the case was transferred to this court.

The crime charged in the indictment is not for a violation of Section 275 of the Penal Code, as stated in the affidavit filed with the commissioner and referred to by him as a complaint, but for a violation of Section 272, paragraph 3, and Section 273 of the Penal Code. Section 275 simply prescribes the penalty for the offenses defined in Sections 272, 273 and 274. Sections 272, 273, and 275 read as follows:

> "Sec. 272. The crimes and offenses defined in this chapter shall be punished as herein prescribed: . . .
> Third. When committed within or on any lands reserved or acquired for the exclusive use of the United States, and under the exclusive jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building."
>
> "Sec. 273. Murder is the unlawful killing of a human being with malice aforethought. Every murder perpetrated by poison, lying in wait, or any other kind of wilful, deliberate, malicious, and premeditated killing; or committed in the perpetration of, or attempt to perpetrate, any arson, rape, burglary, or robbery; or perpetrated from

a premeditated design unlawfully and maliciously to effect the death of any human being other than him who is killed, is murder in the first degree. Any other murder is murder in the second degree."

"Sec. 275. Every person guilty of murder in the first degree shall suffer death. . . ."

The Constitution of the United States, Article I, Sec. 8, Clause 17, reads as follows:

"Sec. 8. The Congress shall have Power . . . To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the same shall be, for the Erection of Forts, Magazines, Arsenals, Dock-yards, and other needful buildings."

The indictment, as above stated, charged that the appellant, on October 25, 1918, deliberately and with malice aforethought shot Alexander P. Cronkhite "within and on lands theretofore acquired for the exclusive use of the United States, and under the exclusive jurisdiction thereof, and within the Southern Division of the Western District of Washington, to wit: within and on the Camp Lewis Military Reservation." There is no dispute that Crankhite was killed on the Camp Lewis Military Reservation on the date named or that the Reservation was within the Southern Division of the Western District of the State of Washington. The appellant denies that he committed the crime and contends that the evidence introduced before the court at the hearing on the petition for a writ of *habeas corpus* and for an order of removal to the State of Washington shows that, at the time when Cronkhite was killed, the land constituting Camp Lewis

Military Reservation had not been acquired by the United States; that the sovereignty of the State of Washington over it had not been abdicated and had not become vested in the Government of the United States; that he had, therefore, not committed a crime against the United States as charged in the indictment, and that the District Court for the Southern Division of the Western District of Washington was without jurisdiction over the offense.

Inasmuch as this was the question desired to be litigated on this appeal and the evidence bearing upon the questions at issue on the petition for removal had not been heard or the order of removal entered at the time the *habeas corpus* application was filed, it was agreed between the parties, in order to avoid the delay that would be occasioned by bringing another petition for a writ of *habeas corpus* to test the validity of the order, that the present petition for such a writ should be treated as having been brought after the order of removal was entered and with like effect.

It has been held in this circuit in *Hastings* v. *Murchie*, 219 Fed. 83, 88, following the decisions in *Tinsley* v. *Treat*, 205 U. S. 20, and *United States* v. *Black*, 160 Fed. 431, that under Section 1014 of the Revised Statutes of the United States (under which the order of removal in this case was made), when an offender against the United States has been indicted in a district in a state other than the district of arrest, then, after the offender has been committed, it becomes the duty of the district judge, on inquiry, to issue a warrant of removal; that the inquiry which the judge is called upon to make, involves judicial discretion; that he must look into the indictment to ascertain if an offense against the United States is charged, find whether there was probable cause, and determine whether the court to which the accused is sought to be removed has jurisdiction of the same; that, on such hearing, the indictment, though *prima facie* evi-

dence of probable cause, is not conclusive; that evidence tending to show that no offense triable in the district to which removal is sought had been committed in that district should be received; and that to decline to receive it involved the denial of a right secured by the statute under the Constitution.

In this case the District Judge received the evidence bearing upon the question whether there was probable cause to believe that the appellant had committed the crime charged on land within Camp Lewis Military Reservation, within the exclusive jurisdiction of the United States in the Southern Division of the Western District of Washington, and found that there was probable cause to believe that he had committed such crime against the United States with that district, and that the District Court of the Southern Division of the Western District of Washington had jurisdiction of the offense.

The removal statute (Sec. 1014) does not provide that the decision of the district judge ordering the removal of an offender shall be final, but if we assume it to be final where the offender has been accorded a fair hearing on substantial evidence, and that, in such a case, the order of removal and proceedings thereunder would not be reviewable on *habeas corpus*, yet we do not understand that, if his findings are so entirely unsupported by evidence as to be unreasonable and to constitute an abuse of discretion and a denial of due process of law, they may not be so reviewed. In fact, it has been so held in this circuit in *Ex parte Petkos*, 212 Fed. 275, 277, which was a case relating to an order of deportation of an alien by the Secretary of Commerce and Labor under a statute expressly making the findings of the Secretary final; which decision was sustained in its main features on appeal to this court. *United States* v. *Petkos*, 214 Fed. 978. And in the case of *Gonzales* v. *Williams*, 192 U. S. 1, where the petitioner, a citizen of Porto Rico, had been

remanded to the custody of the United States Commissioner of Immigration for deportation under the immigration act of March 3, 1891 (26 Stat. at Large, 1084), as an alien immigrant, the court, on *habeas corpus*, reviewed the question whether the petitioner, in view of the facts found, was an alien immigrant within the meaning of the act, and held that the "commissioner had no jurisdiction to detain and deport her by deciding the mere question of law to the contrary; and she was not obliged to resort to the Superintendent or the Secretary," in order to enable her to maintain her petition. In *United States* v. *Sing Tuck*, 194 U. S. 161, at page 168, Mr. Justice Holmes, in speaking of the case of *Gonzales* v. *Williams*, said:

> "There was no use in delaying the issue of the writ until an appeal had been taken, because in that case there was no dispute about the facts but merely a question of law."

And in other cases under the Immigration Act where the party ordered deported as being an alien, brought a petition for a writ of *habeas corpus* alleging and claiming that he was a citizen of the United States, it has been held that his citizenship, although it involved a question of fact, could be inquired into on *habeas corpus*, as his rights as a citizen were protected by the Constitution. And even where the applicant ordered deported was not and did not claim to be a citizen of the United States it has been held that he might have reviewed on *habeas corpus* the findings of the executive officers of the Government, if such findings were not authorized by the act or were not sustained by substantial evidence. *Zakonaite* v. *Wolfe*, 226 U. S. 272, 274; *Kwock Jan Fat* v. *White*, 253 U. S. 454, 457; *Skeffington* v. *Katzeff*, 277 U. S. 129. And in this circuit, in the last-named case, it was held that while the findings of fact by the executive officers are final, yet, if such findings are not authorized by the

act or are not sustained by substantial evidence, they may be reviewed and reversed on *habeas corpus*.

If, in deportation proceedings where the rights of aliens are involved, the findings of the executive officers may be reviewed on *habeas corpus* where there is no substantial evidence to support the findings, we think that, in removal proceedings where the rights of citizens are at stake, review may be had when there is no substantial evidence to warrant the finding of probable cause by the district court, or where, on all the evidence produced before the court, no other conclusion could be reached than that there was want of probable cause, or, what is the same thing, if the question of probable cause depends upon the construction of a statute and written instruments and the construction given them was erroneous or no construction of them was made. In all such cases the question presented would be one of law, the determination of which would disclose whether the alleged offender was unlawfully restrained of his liberty by the order of removal. See also *Mitchell* v. *Dexter*, 244 Fed. 926 (1st Cir. 1917).

We have before us in this case all the evidence presented at the hearing before the district judge on the petition to remove, which includes the indictment, the testimony of four fact witnesses, correspondence between the Secretary of War and the attorney of the county commissioners of Pierce county in the State of Washington, and the act of the legislature of that state authorizing Pierce county as an arm of the state to acquire by condemnation or purchase land in the vicinity of seventy thousand acres located in the state, and donate the same to the United States for a military reservation. We have cited the sections of the statute under which the indictment was brought and the provisions of the Constitution disclosing the way in which the general government may acquire title to land in a state and obtain the power of

exclusive legislation over the same. The leading case in the Supreme Court construing this provision of the Constitution and Section 272 (paragraph 3 of the penal code, is *Fort Leavenworth R. R. Co.* v. *Lowe*, 114 U. S. 525. It was there said:

> "This power of exclusive legislation is to be exercised, as thus seen, over places purchased, by consent of the legislatures of the States in which they are situated, for the specific purposes enumerated. It would seem to have been the opinion of the framers of the Constitution that, without the consent of the States, the new government would not be able to acquire lands within them; and therefore it was provided that when it might require such lands for the erection of forts and other buildings for the defence of the country, or the discharge of other duties devolving upon it, and the consent of the States in which they were situated was obtained for their acquisition, such consent should carry with it political dominion and legislatve authorty over them. Purchase with such consent was the only mode then thought of for the acquisition by the general government of title to lands in the States. Since the adoption of the Constitution this view has not generally prevailed. Such consent has not always been obtained, nor supposed necessary, for the purchase by the general government of lands within the States. If any doubt has ever existed as to its power thus to acquire lands within the States, it has not had sufficient strength to create any effective dissent from the general opinion. *The consent of the States to the purchase of lands within them for the special purposes named is, however, essential, under the Constitution, to the transfer to the general government, with the title, of political jurisdiction and dominion.* Where lands are acquired without such consent, the possession of the United States, unless political jurisdiction be ceded to them in some other way, is simply that of an ordinary proprietor. The property in that

> case, unless used as a means to carry out the purposes of the government, is subject to the legislative authority and control of the States equally with the property of private individuals."

And it was there held that the state might cede its exclusive jurisdiction over land acquired by the federal government within the state directly by an act of the legislature expressly so stating, or indirectly when the purchase by the United States was with the consent of the legislature of the state; and that, where the legislature directly ceded its sovereignty over land within the state by a formal act of cession, it might reserve the right to execute civil and criminal process within the ceded land issued under its authority for acts done within and cognizable by the state, notwithstanding the cession. But once the cession of sovereignty was made over lands within a state purchased by the United States for one of the purposes designated in the statute and Constitution, "such consent under the Constitution operated to exclude all other legislative authority." The court also recognized in its opinion that the right of sovereignty of a state over land purchased by the United States within its boundaries were not to be taken away by implication; that the essence of the provision of the Constitution here under consideration was "that the State shall freely cede the particular place to the United States for one of the specific and enumerated objects. This jurisdiction cannot be acquired tortiously or by disseizin of the State; much less can it be acquired by mere occupancy, with the implied or tacit consent of the State, when such occupancy is for the purpose of protection" (*People* v. *Godfrey*, 17 Johns. 225); that "where . . . lands are acquired in any other way by the United States within the limits of a State than by purchase with her consent, they will hold the lands subject to this qualification: that if upon them forts, arsenals, or other public buildings are erected

for the uses of the general government, such buildings, with their appurtenances, as instrumentalities for the execution of its powers, will be free from any such interference and jurisdiction of the State as would destroy or impair their effective use for the purposes designed." And it was held that, inasmuch as the land constituting the Fort Leavenworth Military Reservation was not purchased by the United States after Kansas became a state but was acquired by it by cession from France many years before, whatever political sovereignty or dominion the United States had over the place came from the cession of the state since its admission into the Union.

In this case there is no claim that the United States had acquired or reserved title to the land embraced within the limits of Camp Lewis Military Reservation before or at the time Washington became a state. The evidence shows that its title was acquired subsequent to that time. Unless it had acquired title with the consent of the state at the time Cronkhite met his death on the military reservation, the crime of murder charged in the indictment was not an offense against the United States.

The District Court in passing upon this question apparently entertained the view that, inasmuch as the evidence showed that before the delivery of the deed and its acceptance by the Secretary of War the United States military authorities had entered upon some of the land acquired by the county and erected buildings and occupied the same with 50,000 men, the state thereby yielded up its sovereignty and the United States acquired exclusive jurisdiction over the land thus occupied; and that this being so, the *prima facie* case of probable cause made by the indictment was not overcome. But, as we have seen above, this evidence had no tendency to show that the state had ceded its sovereignty, as the state's right of sovereignty is not to be taken away by implication.

An examination of the act of the legislature of Washington of 1917, under which Pierce county was authorized to acquire and to donate the land here in question, discloses that it was drawn with great care. It recites that the Secretary of War, with the approval of the President of the United States, had agreed on behalf of the federal government to establish in Pierce county, Washington, a permanent mobilization, training and supply station, *on condition* that land in Pierce county aggregating approximately seventy thousand acres, at such location or locations as have been or may be hereafter, from time to time, selected or approved by the Secretary of War, *be conveyed* to the United States, with the *consent* of the State of Washington, free of cost to the United States. In Section 2 there was imposed upon Pierce county an indebtedness not to exceed two million dollars and the obligation to acquire by condemnation or otherwise land in Pierce county for the purpose above named and convey all such lands to the United States to be used for that purpose. Section 3 provided for the issuing of bonds for the indebtedness. In Sections 4, 5, 6 and 7 provision was made for the assessment of taxes and the payment of the bonds and interest, and in Sections 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19 the power of eminent domain was given for the acquisition of the lands and the mode of procedure thereunder pointed out in great detail. Section 20 reads as follows:

> "Sec. 20. Pursuant to the constitution and laws of the United States, and especially to paragraph seventeen of section 8 of article one of such constitution, the consent of the legislature of the State of Washington, is hereby given to the United States *to acquire*, by donation from Pierce county, title to all lands herein intended to be referred to, *to be evidenced by the deed or deeds of Pierce county signed by the chairman of its board of county commissioners and attested by the clerk of such board under the seal of such board*, and

> *the consent* of the State of Washington *is hereby given to the exercise by the congress of the United States of exclusive legislation* in all cases whatsoever *over such tracts or parcels* of land *so conveyed* to it: *Provided, Upon such conveyance being concluded* a sufficient description by metes and bounds and an *accurate plat or map* of each such tract or parcel of land *be filed in the auditor's office of Pierce county, together with copies* of the orders, *deeds*, patents or other evidences in writing *of the title of the United States;* and Provided, That all civil process issued from the courts of this state and such criminal process as may issue under the authority of this state against any person charged with crime in cases arising outside of said reservation, may be served and executed thereon in the same mode and manner and by the same officers as if the consent herein given had not been made."

It is apparent that this section, read in the light of the surrounding circumstances, means that the sovereign right of the State of Washington over the land in question and the acquisition of exclusive legislative authority and jurisdiction by the United States thereover was not to take place when the land had been conveyed by deed, but only when, upon such conveyance being concluded, a sufficient description by metes and bounds and an accurate map of each tract or parcel of land, together with copies of orders, deeds, patents and other evidences of title, had been filed for record in the auditor's office of Pierce county. The deed was not executed and acknowledged until the first day of October, 1919, when it was signed and acknowledged by the board of county commissioners for Pierce county and accepted on behalf of the United States of America, by Newton D. Baker, Secretary of War; and it was not recorded in the office of the auditor of Pierce county until November 15, 1919.

The correspondence in the case indubitably shows that the parties understood and acted upon the idea that no title was to pass to the United States until the deed was delivered and accepted by the Secretary of War (see letters of December 2, 1916, and June 21, 1918); and the acts of Congress show that down to July 2, 1917, no public money could be expended upon any land acquired by the United States (much less to be acquired) for the purpose of erecting thereon any armory, arsenal, fort, fortification, navy-yard, etc., until the written opinion of the Attorney-General had been had in favor of the validity of the title, "nor until the consent of the legislature of the State in which the land or site may be, to such purchase, has been given." Rev. Stat. s. 355; see letter of December 2, 1916, Exhibit C, written prior to July 2, 1917. On July 2, 1917, the Secretary of War was given authority to purchase or condemn land for fortifications, coast defenses and military training camps or to enter into contracts for the use of the same for such purposes and to "accept donations of land and the interest and rights pertaining thereto required for the above-mentioned purposes"; and it was further provided:

> "That when such property is acquired in time of war or the imminence thereof upon the filing of the petition for the condemnation of any land, temporary use thereof or other interest therein or right pertaining thereto *to be acquired* for any of the purposes aforesaid, *immediate possession thereof may be taken to the extent of the interest to be acquired and the lands may be occupied and used for military purposes*, and the provision of section three hundred and fifty-five of the Revised Statutes, providing that no public money shall be expended upon such land until the written opinion of the Attorney General shall be had in favor of the validity of the title, nor until the consent of the legislature of the State in which the land is located

> has been given, shall be, and the same are hereby, suspended during the period of the existing emergency." Act of July 2, 1917, 40 Stat. at Large, 241; Act of April 11, 1918, 40 Stat. at Large, 518; see letter of July 1, 1918, where it says: "prior to the expiration of the existing war."

This shows plainly the circumstances under which the authorities of the general government entered upon a portion of the land and expended money in the erection of buildings thereon in advance of having obtained title thereto or the approval of title by the Attorney General, and without having obtained the consent of the state.

We are of the opinion that no other conclusion can be drawn from the evidence than that, at the time the crime charged in the indictment was committed, the United States had acquired no title in the land embraced within Camp Lewis Military Reservation; that the sovereignty of the state over the tract had not then been yielded up and was not until the deed, map, etc., were filed in the office of the county auditor of Pierce county for record, which was not until November 15, 1919, more than a year after the alleged murder. This being so, there is an absolute want of probable cause for the removal of the appellant to answer to the crime charged. *Green* v. *Henkel*, 183 U. S. 249, 261.

The order of the District Court directing the removal of the appellant is reversed, and the petition for an order of removal is denied. The decree of the District Court dismissing the petition for a writ of habeas corpus is reversed; and it is ordered that the appellant be discharged from custody.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1923.

No. 546.

WILLIAM R. RODMAN, UNITED STATES MARSHAL,
Petitioner,

vs.

ROLAND R. POTHIER, *Respondent.*

MOTION FOR LEAVE TO FILE BRIEF AND TO PARTICIPATE IN THE ARGUMENT AS AMICI CURIAE.

JESSE C. ADKINS,
FRANK F. NESBIT,
Amici Curiae Attorneys,
for Adelbert Cronkhite.

February, 1924.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1923.

No. 546.

WILLIAM R. RODMAN, UNITED STATES MARSHAL,
Petitioner,

vs.

ROLAND R. POTHIER, *Respondent.*

MOTION FOR LEAVE TO FILE BRIEF AND TO PARTICIPATE IN THE ARGUMENT AS AMICI CURIAE.

Now comes Adelbert Cronkhite and moves the Court for leave to file a brief herein in support of the position taken by William R. Rodman, United States Marshal, and for leave to have counsel filing said brief participate in the oral argument hereof.

The said Adelbert Cronkhite shows to the Court that on October 13, 1922, the grand jurors of the United States in and for the Southern Division of the Western

District of the State of Washington duly filed in the United States District Court for said district an indictment charging the respondent herein, Roland R. Pothier, with having murdered Alexander P. Cronkhite on October 25, 1918, within and on lands under the exclusive jurisdiction of the United States within said Southern Division of the Western District of Washington; that the said Adelbert Cronkhite is the father and nearest next of kin of the said Alexander P. Cronkhite, deceased.

JESSE C. ADKINS,
FRANK F. NESBIT,
Amici Curiae Attorneys,
for Adelbert Cronkhite.

February, 1924.

DAVIS S. ARNOLD, ESQ.,
Attorney for Roland R. Pothier.

Please take notice that the foregoing will be presented to the Supreme Court of the United States on Monday, the third day of March, 1924.

JESSE C. ADKINS,
FRANK F. NESBIT,
Amici Curiae Attorneys,
for Adelbert Cronkhite.

Service of copy of the foregoing motion and of brief to be filed as amici curiae acknowledged this —— day of February, 1924.

IN THE

Supreme Court of the United States

OCTOBER TERM 1923.

No. 546.

WILLIAM R. RODMAN, United States Marshal,
Petitioner,
vs.
ROLAND R. POTHIER, *Respondent.*

BRIEF OF AMICI CURIAE ON BEHALF OF PETITIONER.

JESSE C. ADKINS,
FRANK F. NESBIT,
Amici Curiae, Attorneys for General Adelbert Cronkhite.

February, 1924.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

INDEX.

IN THE

Supreme Court of the United States

October Term, 1923

No. 546

WILLIAM R. RODMAN, United States Marshal,
Petitioner,

vs.

ROLAND R. POTHIER, *Respondent*.

BRIEF OF AMICI CURIAE ON BEHALF OF PETITIONER.

The facts are contained in the brief for petitioner. A short statement here will suffice.

October 19, 1922, the United States Commissioner for Rhode Island, after due examination found that the offense of murder had been committed in the Western District of Washington as set out in the indictment, and that there was probable cause to believe that Pothier had committed that crime; he therefore commit-

ted Pothier to the custody of the Marshal to await removal (Rec. 4, Ex. A to petition).

December 6, 1922, Pothier filed in the District Court for Rhode Island his petition for the writs of habeas corpus and certiorari, attaching as Exhibit B copy of the indictment against him in the Washington district (5). Neither writ was issued. A citation only was issued to the Marshal to show cause on December 11th why the petitions should not be granted (10). There was no answer to this citation, but it and the Government's petition for warrant of removal were heard together. January 11, 1923, the District Judge filed an opinion, holding that it appeared that the indictment was by a court of competent jurisdiction; that there was probable cause for Pothier's commitment by the Commissioner, and that his detention was valid (37). January 30, an order was signed finding that the petition failed to state sufficient grounds for granting the writ of habeas corpus, and that the detention of accused was in accordance with law, and adjudging that the petition for writ of habeas corpus be dismissed and denied (40).

On the petition for removal, the Court filed an opinion holding that defendant had failed to overcome the prima facie case made out by the indictment; that the evidence failed to show want of probable cause and that the warrant of removal should issue (37).

Pothier appealed only from the order denying the petition for habeas corpus (40), and further proceedings on the warrant of removal were stayed (44).

At the argument in the Circuit Court of Appeals, it was stiplated that the appeal should be considered as one from an order of the district court denying a petition for writ of habeas corpus filed to test the legality

of restraint under the warrant of removal authorized by the opinion of that court (146).

The printed record contains what purports to be a transcript of the proceedings taken December 11, 1922. It appears to have been taken in the hearing on both petitions. It consists of the testimony of four witnesses and a number of exhibits. It was not preserved by bill of exceptions (13 to 37). The original exhibits were transmitted to this Court (44), and are printed in the record (47-144).

The opinion of the Court of Appeals contains a number of errors, due perhaps to the confused state of the record.

That opinion says that after the filing of the petition for writs of habeas corpus and certiorari, the citations issued by the District Judge required the Marshal to produce appellant before the court and the Commissioner to certify the proceedings and evidence before him (148). Apparently this is on the mistaken assumption that the writs of habeas corpus and certiorari were actually issued. In fact the Commissioner and the Marshal were notified of the filing of the petitions and that the hearing would be had, and they were cited to attend and show cause why the petitions should not be granted (10).

The Court of Appeals states that all the evidence presented at the hearing before the District Judge on the petition for removal is before the Court. That evidence is not preserved by bill of exceptions, though it is physically in the record. On the habeas corpus petition, the writ not having issued, there was merely a question of law whether a prima facie case was made out for the issuance of the writ on which question evidence would not be proper. The stipulation

amending in substance the petition for habeas corpus, does not attempt to incorporate therein the evidence on the application for removal.

Finally the Court reversed the order of removal (156), from which order no appeal had been taken.

ARGUMENT

UNDER THE PRINCIPLES ANNOUNCED BY THIS COURT, THE DISTRICT COURT PROPERLY DECLINED TO ISSUE A WRIT OF HABEAS CORPUS TO INQUIRE INTO THE VALIDITY OF POTHIER'S DETENTION UNDER THE WARRANT OF REMOVAL.

The United States has attempted by regular process to compel Pothier to answer an indictment for murder found against him in its District Court for the Western District of Washington. Pothier has attempted to frustrate that regular process.

After indictment, Pothier was arrested before the United States Commissioner in Rhode Island. At a formal hearing he had the opportunity to introduce evidence. He raised the legal question now involved. He was held for removal. The next regular hearing was held before the United States Judge on application for warrant of removal. Pothier gave evidence and again presented to that judge his objections to removal.

His evidence was held insufficient to overcome the probable cause made by the indictment.

The present proceeding by Pothier is to prevent the carrying out of the judge's order for his removal on the same grounds presented to and decided by the district judge, and necessarily to prevent the United

States from ever placing him upon trial on the present or any other similar indictment.

This effort is made notwithstanding the fact that Pothier's claim can again be presented to the trial court and presumably will be properly decided there.

Where an indicted person is arrested outside the Federal District where the indictment is returned, the procedure for his removal is not entirely satisfactory.

Such a proceeding is not a case of extradition. There is no surrender of the accused by the United States to a foreign nation, nor is there the qualified extradition which arises when one State within the Union surrenders to another an alleged fugitive from its justice. Beavers v. Henkel, 194 U. S. 82.

Such a proceeding is simply an effort "on the part of the United States to subject a citizen found within its territory to trial before one of its own courts." The locality in which the offense is charged to have been committed determines, under the Constitution and laws, the place and court of trial. The question is, what steps are necessary to bring the alleged offender to that place and before that court (Ib. 83).

In prosecutions for infamous offenses the Fifth Amendment requires indictment by a grand jury. But it does not require two indictments nor a preliminary hearing after indictment (Ib. 83-85).

It would not be an unreasonable exercise of power if the United States by statute should provide that after indictment in one of its courts, the accused might be arrested on the warrant of that court wherever found within our territorial limits. Indeed it has been held by Attorneys General under existing statutes that the arrest might thus be made. See Case of Oaksmith, 11 Op. Attys. Gen. 127.

However, this practice has not in fact been followed. In such cases, proceedings have been taken under Section 1014 R. S. U. S. If the hearing was held before indictment, it has been conducted in the way customary at common law, before a committing magistrate. If, as was frequently the case, an indictment had already been found, the United States produced before the Commissioner only a certified copy of the indictment. On the principle approved by this court in Beavers v. Henkel, 194 U. S. 73, it is held that this makes a prima facie case.

This practice had been established for more than one hundred years before any case was brought to this court.

In 1899 Greene and Gaynor, who had a contract to construct certain river and harbor improvements in the Savannah River, were indicted in the United States District Court for the Southern District of Georgia, together with a Captain Carter, for conspiring to defraud the United States in connection with that contract.

After indictment they were arrested in New York and began a determined fight to avoid removal. After the case in this court had gone against them, they fled to Canada and it was 1902 before they were removed to Georgia. United States v. Greene, 113 Fed. 683.

In the proceeding before the United States Commissioner in New York the Government gave in evidence certified copy of the indictment and other proof. The accused gave evidence tending to show lack of probable cause. Upon the entire case both the Commissioner and the district judge held there was evidence of probable cause. This Court held that if there was any competent evidence before the Commissioner,

his decision could not be reviewed on habeas corpus and that the court would not in such proceeding in any event look into the weight of the evidence on that question. Greene v. Henkel, 183 U. S. 249, 259-261.

That pioneer case has been followed in many similar efforts to avoid trial. In but one case coming before this Court has the accused succeeded. There the discharge was based on the refusal of the Commissioner to permit accused to give evidence to show lack of probable cause. In all the cases, the accused has accomplished a substantial delay, ranging from six months to several years.

In 1903 fraud and corruption were discovered in the Post Office Department and in the General Land Office in Washington. As a result of prompt and thorough investigation, numerous indictments were returned in the District of Columbia, and some in other Federal courts. Beavers was indicted in Brooklyn, in July, 1903. He was arrested in Manhattan. The Government produced before the Commissioner only a certified copy of the Brooklyn indictment and Beavers offered no evidence. It was held that the Constitution did not require two inquiries and adjudications; and that the certified copy of the Brooklyn indictment made a prima facie case of probable cause. Beavers v. Henkel, 194 U. S. 73.

In 1903 Beavers was also indicted in the District of Columbia. The United States concluded to first try him here. The Government in this proceeding again relied only on the certified copy of the indictment. Beavers made a statement to the Commissioner under New York practice. The Commissioner found probable cause. This Court held that the finding was justified; that the proof afforded by the indictment was

not overcome; that the testimony of the accused when weighed with the indictment did not remove all reasonable grounds of presumption of the commission of the offense. Beavers v. Haubert, 198 U. S. 77, 90. Nearly two years was consumed by Beavers in opposing these removal proceedings.

Green, a co-defendant of Beavers in the District of Columbia indictments, was arrested in the Northern district of New York. The order denying his discharge on habeas corpus was affirmed in a per curiam opinion in October, 1905. Green vs. MacDougall, 199 U. S. 601.

Benson and Hyde were indicted in the District of Columbia in December, 1903. They were charged with conspiring to defraud the United States in connection with obtaining public lands, and there was also a separate charge of bribery against Benson. Benson was arrested in New York and Hyde in California. After vigorous contests they were removed here for trial. The decisions of this Court were in April and May, 1905. Benson v. Henkel, 198 U. S. 1; Hyde v. Shine, 199 U. S. 62.

In addition to reaffirming the propositions decided in earlier cases, it was held that on habeas corpus technical defects in the indictment would not be considered.

Tinsley was indicted in Tennessee under the Sherman Law and was arrested in Virginia. The Commissioner refused to receive evidence offered by him to show lack of probable cause. This was held error by this Court and Tinsley was discharged, without prejudice to a renewal of the application to remove. Tinsley v. Treat, 205 U. S. 20.

Haas and Peckham, residents of New York, were

indicted in the District of Columbia in connection with leaks in the cotton crop reports of 1904 and 1905. No statute specifically forbade the disclosure by Government employees of the information prior to the official publication of the report, though such disclosure was in violation of the rules and practice of the Department of Agriculture. The indictment charged the associate statistician with conspiring with Haas and Peckham to defraud the United States and commit the offense of misconduct in office. The Commissioner and the district judge in New York did not believe that misconduct in office was a crime in the District of Columbia nor that any fraud upon the United States was shown in the indictment; therefore they refused to order the removal of Haas and Peckham for trial. U. S. vs. Haas, 167 Fed. 211.

Thereafter other indictments were found against Haas, Peckham and Price, in the Southern District of New York as well as in the District of Columbia. The two sets of indictments were identical except as to the venue of the conspiracy. Defendants were first arrested on the New York indictments. After demurrers to those indictments had been overruled, removal proceedings were instituted to bring them to the District of Columbia for trial with the Government official who had been indicted here. The Government produced only certified copies of the Washington indictments. The accused called before the Commissioner in New York all the witnesses before the District of Columbia grand jury for the purpose of showing that there was before that grand jury no evidence to justify an indictment; and to show lack of probable cause they produced before the Commissioner the New York indictments alleging the same conspiracy

to have been formed in New York. They attempted to show that the statute of limitations had barred the prosecutions, and argued that the indictments both in substance and in form failed to show any offense against the United States. This Court again held that the technical objections to the indictments could not be considered; that in substance they charged conspiracy to defraud the United States; that the defense of the statute of limitations could not be made in removal proceedings, and that the prima facie case made out by the District of Columbia indictments was not overcome by the New York indictments. Haas v. Henkel, 216 U. S. 462; Price v. Henkel, ib. 488.

In these cases the first indictment was in 1905 and the later indictments in May, 1908. The decision in this court was in February, 1910.

Henry, a New York banker, refused to answer certain questions before a committee of the House of Representatives. In February, 1913, he was indicted in this District under Sections 101 to 104 RSUS. In removal proceedings he asserted that these sections were unconstitutional. This Court in November, 1914, held that question was for the trial court. Henry v. Henkel, 235 U. S. 219.

Rumley was indicted in the District of Columbia for failure to file certain reports with the Alien Property Custodian. On arrest in New York he contended that the indictment on its face showed that if he had filed the reports, he would have shown himself guilty of violating another part of the statute, and that he could not constitutionally be compelled to be a witness against himself. This Court held that the accusatory averments of the indictment, admitted for the purpose of the removal proceedings to be true, made out a prima

facie case of offense against the laws of the United States indictable in the District of Columbia and that appellant's constitutional point merely raised a probability that a defense would be interposed, and thus a controversy would arise, the determination of which was within the proper jurisdiction of the court where the indictment was found. Rumley v. McCarthy, 250 U. S. 283, 288.

As a result of these decisions the following principles have been firmly established:

A Commissioner will be justified in holding, and a District Judge in ordering removed an accused person, if probable cause is found to exist.

Probable cause is established if any competent evidence is produced tending to show the identity of the accused and that an act has been committed within the trial district, which act is a violation of any existing Federal statute.

A certified copy of an indictment in the demanding Federal court is prima facie evidence of the facts alleged therein, and of probable cause.

The accused may give evidence to show lack of probable cause, but if that evidence contradicts the indictment, it is for the Commssioner and the District Judge to decide the conflict, and if they find probable cause, that determination is not reviewable.

Technical rules of pleading are not applied to the indictment; it is enough if in substance it states a violation of the statutes.

Matters of defense will not be considered, whether they relate to the innocence of the accused, the statute of limitations, the sufficiency of the indictment, the constitutional right of the accused not to be a witness against himself, or that the conspiracy be formed and capable of prosecution and indictment therefor be ac-

tually pending in the very district from which the accused is being removed. And even though the prosecution be under an unconstitutional (and therefore a void) statute that question must be decided by the trial court.

Applying these principles, the decision of the district court refusing to issue the writ of habeas corpus was correct.

1. *The amended petition for habeas corpus failed to show sufficient grounds for issuing the writ.*

The petition shows the indictment found in the Western District of Washington against Pothier, charging him with committing murder on land under the exclusive jurisdiction of the United States in that district. The indictment is in the usual form and is valid on its face (1, 5).

The petition also shows formal order of the United States Commissioner finding probable cause to believe that Pothier committed the crime (2, 4).

Under the stipulation, it is presumed that in addition to this order a similar one was issued by the District Judge in accordance with his opinion (Pages 37-40), in which he finds that the defendant has failed to overcome the prima facie case made out by the indictment (40, 146).

While the original petition undertook to produce all the testimony offered before the Commissioner (2), the stipulation and the petition as amended thereby, make no such effort. The stipulation merely is that the petition is to be considered as filed after the issue of a warrant of removal in accordance with the judge's opinion (146).

The petition, itself, merely alleges that the accused

did not commit the crime of murder anywhere and that he did not commit it within the jurisdiction of the district court and that he is prepared to produce evidence to establish these allegations and that the evidence before the Commissioner did not show him guilty of an offense in the Western District of Washington. (Petition, paragraphs 5, 7, 9.)

Pothier does not bring himself within the case of Tinsley v. Treat, 205 U. S. 20. He does not allege that he offered to give evidence and that such evidence was rejected. On the contrary he affirmatively shows that the Washington indictment was before the Commissioner and the District Judge, that Pothier was permitted to give all the evidence he desired and that the Commissioner and District Judge both found there was evidence of probable cause and that Pothier's evidence did not overcome the prima facie case made out by the indictment. This petition, itself, shows that all rights of the accused were fully protected, that he had a complete hearing and that the question was decided against him. It would, therefore, be useless for the court to issue the writ of habeas corpus and hear the question over again. A case for the writ was not made out.

The foregoing proposition is true, even on the assumption that the evidence taken in the removal proceeding is legally before this Court and that such evidence is properly to be considered as amplifying the petition for writ of habeas corpus.

But the evidence on removal proceeding is not properly before this Court. The stipulation does not attempt to attach it to the petition.

On a rule to show cause why a writ of habeas corpus should not issue, the question is purely one of law, to be considered on the contents of the petition alone, and

not on evidence to be introduced. There is no issue of fact until the writ of habeas corpus has been issued and the return has been filed.

Again, a writ of habeas corpus is a common law writ. While under Sections 763 and 764 of the Revised Statutes, review is by appeal, the evidence should be brought up by bill of exceptions as was done in Rice v. Ames, 180 U. S. 371, and Riggins v. U. S., 199 U. S. 547.

2. *A prima facie case was made out by the indictment. The District Judge's decision that this prima facie case was not overcome by the evidence of the accused is conclusive.*

The foregoing cases hold over and over again that the indictment makes a prima facie case of probable cause; that while the accused may give evidence to show lack of probable cause, yet when there is a conflict of testimony, it is for the Commissioner and the District Judge to decide that conflict and their decision will not be reviewed if there is any competent evidence on the subject before them.

Greene v. Henkel, 183 U. S. 259, 261. If there is any competent evidence before the Commissioner, his decision cannot be reviewed; the court will not look into the weight of the evidence on the question of probable cause.

Hyde v. Shine 199 U. S. 63, 84. In this case the production of indictment made at least a prima facie case against the accused and if the Commissioner received evidence on his behalf, it was for him to say whether on the whole testimony there was proof of probable cause.

In Price v. Henkel, 216 U. S. 492, this court said:

> "The commissioner had before him competent evidence in the certified copies of the District of Columbia indictments upon which he might base a conclusion of probable cause. At most, the New York indictments, together with the evidence tending to prove that appellant had not been in the District of Columbia at any of the times when the conspiracy was said to have been formed, only made an issue which the Commissioner had jurisdiction to decide, and when we find from the proceedings before him that he did hear such evidence upon which he might base his decision, that decision is not open for review upon a petition for a writ of habeas corpus."

To the same effect is Haas v. Henkel, 216 U. S. 482.

The Court of Appeals entirely overlooks the foregoing decisions. It holds that if the judge's findings are so unsupported by evidence as to be unreasonable and to constitute an abuse of discretion and a denial of due process of law, they may be reviewed (150).

The cases cited deal with findings of immigration officers.

In the present case, the Washington indictment was produced before the Commissioner and the District Judge. That indictment alone is sufficient under the foregoing cases to make probable cause. And the District Judge has found that the prima facie case made out thereby is not overcome. The findings are not unsupported by evidence, they are reasonable, and do not constitute an abuse of discretion. Therefore they may not be reviewed.

The only case cited by the Court of Appeals requiring consideration is Greene v. Henkel. There Mr. Justice Peckham said in substance that the court did not hold that if it appears that the offense was not com-

mitted in or triable in the district to which removal is sought, the court would be justified in ordering removal, but that in such case there would be no jurisdiction to commit nor any to order removal. 183 U. S. 261.

This language was later restated by this Court in Henry v. Henkel, 235 U. S. 230:

> "The cases stated do not, of course, lead to the conclusion that a citizen can be held in custody or removed for trial when there was no provision of the common law or statute making an offense of the acts charged. In such case the committing court would have no jurisdiction. The prisoner would be in custody without warrant of law and therefore entitled to his discharge."

In the present case the defense is not one of jurisdiction but one of venue. The statute makes punishable by the United States murder committed on lands within its exclusive jurisdiction. The Government asserts and the District Judge has found that there is sufficient evidence to hold that the land on which this crime was committed is within the exclusive jurisdiction of the United States.

It is admitted that the United States has jurisdiction to punish murder; there is a dispute involving questions of fact and law whether the land upon which the act was done is within the exclusive jurisdiction of the United States. The objection is solely one of venue. It is one which arises in every criminal case in state as well as in Federal courts; it is an element of every crime and often involves a disputed question of fact.

If an indictment on which removal is sought does not charge or attempt to charge that an offense was committed within the territorial limits of the district where

the indictment is found, or if an indictment for murder be charged to have been committed within the Western District of Washington, but does not allege that it was committed upon lands within the exclusive jurisdiction of the United States, then the language of Mr. Justice Peckham would apply and the accused would not be ordered returned. Or if the language of the indictment does not substantially charge a violation of any Federal law, there should be no removal.

But if the indictment charge that an offense was committed within the territorial limits of the district where the indictment was found, and the Commissioner received evidence to the effect that no crime was committed, or that if any crime was committed it occurred in another Federal district, or not on a Government reservation; the finding of the District Judge on that disputed question of fact will not be reviewed, and this even though the evidence be equal on both sides, as in Price v. Henkel, 216 U. S. 490.

So if the offense was committed at or near the border; if the Government rely entirely on the indictment for proof of venue and the accused call witnesses who testify that the act was done beyond the border, it is for the Commissioner and District Judge to decide that conflict. If the offense be charged as committed in a fort within the exclusive jurisdiction of the United States, if the accused attempt to prove a defect in the condemnation proceedings and that complete title did not pass to the United States, the decision of the Commissioner and the District Judge on that question will not be reviewed.

As this Court has held, such questions do not go to the jurisdiction of the trial court but to the jurisdiction of the United States. Louie v. U. S. 254, U. S. 548. This Court has already decided the question presented

in this appeal. In transferring this case to the Court of Appeals, it was said:

> "But it is clear that the objection raised by the petitioner" (Pothier) "does not raise a question of jurisdiction directly appealable to this court from the district court. *Such objection goes to the merits and the appeal must be to the Circuit Court of Appeals.* Louie v. U. S., 254 U. S. 548, 550, 551." (Italics ours.) Pothier v. Rodman, 261 U. S. at 311.

It follows that the objection raised by Pothier being one of guilt or innocence, is to be decided by the trial court.

3. *Important and difficult questions of law should not be decided adversely to the United States by a Commissioner but should be left to the decision of the trial court in regular course.*

In Benson v. Henkel, 198 U. S. 1, 10, this court said:

> "It is scarcely seemly for a committing magistrate to examine closely into the validity of an indictment found in a Federal court of another district and subject to be passed upon by such court on demurrer or otherwise."

In Haas vs. Henkel, *supra*, p. 482, Mr. Justice Brewer, in his concurring opinion, said any doubt as to the validity of the indictments

> "should be settled by the direct action of the court in which the indictments were returned and not in removal proceedings."

He thought there was such a doubt as to the indictments. Mr. Justice McKenna, while concurring in

the removal, expressly reserved his opinion on the merits as to whether the facts constituted a conspiracy to defraud the United States. Ib. 482, 483.

In Henry v. Henkel, 235 U. S. 229, this court reiterated that the hearing on habeas corpus is not in the nature of a writ of error, nor intended as a substitute for the functions of a trial court; this is true as to disputed questions of fact, and equally so as to disputed matters of law, whether they relate to the sufficiency of the indictment or to the validity of the statute on which charge is based:

> "*These and all other controverted matters of law and fact are for the determination of the trial court.* * * * *The rule is the same whether he is committed for trial in a court within the district or held under a warrant of removal to another State.* He cannot, in either case, anticipate the regular course of proceeding by alleging a want of jurisdiction and demanding a ruling thereon in habeas corpus proceedings." (Italics ours.)

On the view most favorable to the accused, the present case does involve an important and controverted matter of law; this question involves the construction of the Constitution, of sections of the Penal Code and of an act of the Washington Legislature, and involves careful examination of a large number of facts, including correspondence and negotiations between the Secretary of War and officials of Pierce County. The question of law is vigorously disputed. In most cases, it would be far easier for the Commissioner to determine the questions of pleading arising upon the indictments and just as easy for him to determine the constitutionality of statutes similar to that involved in the Henry case.

Applying that case, the accused here should not be permitted to anticipate the regular course of proceedings, but should be remitted, as was Henry, to the court in which the indictment is pending.

4. *Even if the district court had the right to discharge Pothier on habeas corpus, it also had discretion to refuse to interfere at this stage. This discretion was wisely exercised and will not be interfered with on appeal.*

It is impossible to imagine a case where a criminal court has in fact less jurisdiction than when it is proceeding under an unconstitutional statute. As this Court said in Ex parte Royall, 117 U. S. 241, 248:

> "As was said in Ex parte Siebold, 100 U. S. 371, 376, 'An unconstitutional law is void and is as no law. An offense created by it is not a crime. A conviction under it is not merely erroneous but is illegal and void and cannot be a legal cause of imprisonment.'"

The statute involved in Ex parte Royall was later held unconstitutional by this Court. Royall while under arrest in criminal proceedings in the state courts of Virginia, sought a writ of habeas corpus from the United States Circuit Court, alleging that the statute was unconstitutional. The writ was denied. On appeal this Court held that while the Circuit Court had power to and might discharge the accused in advance of his trial, if restrained of his liberty in violation of the national Constitution, yet it was not bound to exercise that power immediately upon application being made

for the writ; that the circuit court had a discretion whether it would discharge the accused upon habeas corpus in advance of his trial and that such discretion was not abused in that case (Pages 251, 254).

This principle has been proved in many subsequent cases. Reference to Riggins v. United States, 199 U. S. 547, is sufficient here.

Riggins was indicted in the District Court of the United States for the Northern District of Alabama. The indictment charged a conspiracy under Sections 5508 and 5509, Revised Statutes, to lynch a negro then in the hands of the state authorities on a charge of murder. Riggins, after arrest, applied to the Circuit Court for writ of habeas corpus asserting that the indictment did not charge a violation of any Federal law. The writ was issued but discharged after formal hearing. This Court following the principles announced by it in a number of preceding cases held that it was a judicious and salutary rule not to interfere with criminal proceedings in advance of their final determination by the proper court. And in order to avoid the recognition of the property of Riggins' application which would follow from an affirmance of the action of the court below, this Court reversed the order and remanded the case with directions to quash the writ and dismiss the petition without prejudice.

In the present case the trial court exercised its discretion. It heard and considered the question raised and it decided that no cause was stated in the petition which would justify anticipating the regular course of procedure. The petition shows sufficient evidence of probable cause. The point raised was one of defense within the jurisdiction of the trial court to decide. Following the view of this Court in the Riggins case, the

district court refused even to issue the writ of habeas corpus.

Any hardship suffered by Pothier in this case is less than that suffered by Haas, Peckham and Price, who were actually undergoing prosecution for the identical offense in the district from which they were removed. His hardship is less than that suffered by Beavers and by Rumley, who also were under indictment for similar offenses in the districts of their arrest; or that by Hyde, who could have been prosecuted in California for the same offense, as well as in the District of Columbia.

The language of this Court in Beavers v. Henkel, 194 U. S. 83, is peculiarly appropriate. There the Court said it was less reluctant to interfere in the removal proceedings because the full protecting power of the United States over the accused would continue after his removal to the appropriate place for trial.

5. *At the time of the commission of the murder, the United States did have exclusive jurisdiction over the locus of the crime alleged in the indictment.*

This is so convincingly established in the brief for the Government that it need not be restated here.

CONCLUSION

It is respectfully submitted that there was ample evidence of probable cause before the District Judge, who so found; that the petition for the writ of habeas corpus affirmatively showed the existence of sufficient evidence of probable cause before the District Judge; that the petition for the writ of habeas corpus was properly denied; and that the decision of the Circuit

Court of Appeals must be reversed with directions to affirm that of the District Court.

JESSE C. ADKINS,
FRANK F. NESBIT,
Amici Curiae, Attorneys for General Adelbert Cronkhite.

February, 1924.

RODMAN, UNITED STATES MARSHAL, *v.* POTHIER.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

No. 546. Argued March 14, 1924.—Decided April 7, 1924.

Where a person was held for removal under an indictment charging murder on a military reservation under exclusive jurisdiction of the United States, and the existence of such exclusive jurisdiction involved consideration of many facts and seriously controverted questions of law, *held*, that determination of that issue was for the court where the indictment was found and was not open for decision in another district in *habeas corpus*. P. 402.

291 Fed. 311, reversed.

CERTIORARI to a judgment of the Circuit Court of Appeals which reversed a judgment of the District Court dismissing a writ of *habeas corpus*, and ordered the prisoner discharged.

Mr. Solicitor General Beck, with whom *Mr. Alfred A. Wheat*, Special Assistant to the Attorney General, was on the brief, for petitioner.

Mr. Louis Marshall, with whom *Mr. Davis G. Arnold* was on the brief, for respondent.

Mr. Jesse C. Adkins and *Mr. Frank F. Nesbit*, by leave of Court, filed a brief as *amici curiae*.

Mr. Louis Marshall, by leave of Court, filed a brief as *amicus curiae*.

MR. JUSTICE MCREYNOLDS delivered the opinion of the Court.

Respondent Pothier and another were duly indicted—October 13, 1922—for the murder of Alexander P. Cronkhite, on October 25, 1918, "within and on lands theretofore acquired for the exclusive use of the United States, and under the exclusive jurisdiction thereof, and within the Southern Division of the Western District of Washington, to wit, within and on the Camp Lewis Military Reservation." Pothier was arrested in the State of Rhode Island and, after hearings before the Commissioner and the District Court, a warrant for his removal was directed as provided by § 1014, Rev. Stats. By this *habeas corpus* proceeding the validity of the warrant is questioned and respondent's release sought. His contention is that the United States had not acquired exclusive jurisdiction over the place of the crime as alleged by the indictment because they had not then received a deed to the land.

The District Court said and held, 285 Fed. 632—

"The argument of the defense is that by the terms of the statute the passing of the deed is a prerequisite to the exclusive jurisdiction of the United States, and that as the deed postdates the time of the alleged murder the United States did not then have exclusive jurisdiction over the lands conveyed by said deed. But the evidence shows also that before the passage of the deeds, and before the date of the alleged murder, Pierce County, acting as the arm and agent of the State, had acquired by condemnation, and had turned over to the United States military authorities, many tracts of land comprised within the Camp Lewis Military Reservation, which had been selected by a representative of the Secretary of War, and which, when donated to the United States, the Secretary of War had been authorized to accept. Buildings had been erected and the camp permanently occupied before January 29, 1918, and before July, 1918, there were 50,000 men in camp. There is much evidence tending to show that as to a number of the tracts of land comprised in the camp there was, before the date of the alleged crime, a practical consummation of the donation, and that the agents of the county and of the United States had done all that it was necessary to do in order to vest title and exclusive jurisdiction in the United States, save the execution and recording of the deeds whereby the title of the United States should be evidenced. The contention of the United States that the evidence of *de facto* exercise of exclusive jurisdiction is sufficient in itself to show probable cause cannot be disregarded, in view of the *quaere* in *Holt* v. *United States*, 218 U. S. 245, 252: 'The documents referred to are not before us, but they properly were introduced, and so far as we can see justified the finding of the jury, even if the evidence of the *de facto* exercise of exclusive jurisdiction was not enough, or if the United States was called

on to try title in a murder case.' . . . I am of the opinion that the defendant has failed to overcome the *prima facie* case made by the indictment, and that the evidence fails to show the want of probable cause."

The Circuit Court of Appeals, 291 Fed. 311, was "of the opinion that no other conclusion can be drawn from the evidence than that, at the time the crime charged in the indictment was committed, the United States had acquired no title in the land embraced within Camp Lewis Military Reservation; that the sovereignty of the State over the tract had not then been yielded up and was not until the deed, map, etc., were filed in the office of the County Auditor of Pierce County for record, which was not until November 15, 1919, more than a year after the alleged murder. This being so, there is an absolute want of probable cause for the removal of the appellant to answer to the crime charged. *Greene* v. *Henkel*, 183 U. S. 249, 261." It accordingly reversed the judgment of the District Court and directed Pothier's discharge.

We think there was enough to show probable cause and that the judgment of the District Court is correct. Whether the *locus* of the alleged crime was within the exclusive jurisdiction of the United States demands consideration of many facts and seriously controverted questions of law. As heretofore often pointed out, these matters must be determined by the court where the indictment was found. The regular course may not be anticipated by alleging want of jurisdiction and demanding a ruling thereon in a *habeas corpus* proceeding. Barring certain exceptional cases (unlike the present one), this Court "has uniformly held that the hearing on *habeas corpus* is not in the nature of a writ of error nor is it intended as a substitute for the functions of the trial court. Manifestly, this is true as to disputed questions of fact, and it is equally so as to disputed matters of law, whether they relate to the sufficiency of the indictment or

the validity of the statute on which the charge is based. These and all other controverted matters of law and fact are for the determination of the trial court." *Henry* v. *Henkel*, 235 U. S. 219, 229; *Louie* v. *United States*, 254 U. S. 548.

Reversed.